

# APPROPRIATIONS

## CHAPTER 1

### HOUSE BILL NO. 1001

(Appropriations Committee)  
(At the request of the Legislative Council)

### LEGISLATIVE BRANCH

AN ACT providing an appropriation for defraying the expenses of the legislative branch of state government; to provide for a legislative council review; to provide for transfers; to provide an exception; to amend and reenact subdivision c of subsection 7 of section 54-03-20 and subsection 1 of section 54-35-10 of the North Dakota Century Code, relating to legislative leaders' monthly compensation and interim legislative council pay; to provide an effective date; and to declare an emergency.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the legislative branch of state government in section 3 of this Act as follows:

Subdivision 1.	
SIXTIETH AND SIXTY-FIRST LEGISLATIVE ASSEMBLIES AND BIENNIUM	
Salaries and wages	\$6,084,617
Operating expenses	3,017,773
Capital assets	232,085
National conference of state legislatures	177,750
Total all funds - Base level	\$9,512,225
Less estimated income - Base level	20,000
Total general fund - Base level	\$9,492,225

Subdivision 2.	
LEGISLATIVE COUNCIL	
Salaries and wages	\$5,205,205
Operating expenses	2,367,736
Capital assets	41,000
Higher education study	175,000
Total general fund - Base level	\$7,788,941
Total general fund - Section 1	\$17,281,166
Total other funds - Section 1	\$20,000
Total all funds - Section 1	\$17,301,166

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the legislative branch of state government which are included in the appropriation in section 3 of this Act as follows:

Subdivision 1.	
SIXTIETH AND SIXTY-FIRST LEGISLATIVE ASSEMBLIES AND BIENNIUM	
Salaries and wages	\$770,940
Operating expenses	(19,342)
Capital assets	(26,085)
National conference of state legislatures	28,564
Legislative applications replacement	<u>3,910,827</u>
Total all funds - Adjustments/enhancements	\$4,664,904
Less estimated income - Adjustments/enhancements	<u>(20,000)</u>
Total general fund - Adjustments/enhancements	\$4,684,904

Subdivision 2.	
LEGISLATIVE COUNCIL	
Salaries and wages	\$603,058
Operating expenses	270,731
Capital assets	16,000
Higher education study	<u>(175,000)</u>
Total general fund - Adjustments/enhancements	\$714,789
Total general fund - Section 2	\$5,349,693
Total other funds - Section 2	(\$20,000)
Total all funds - Section 3	\$5,379,693

**SECTION 3. APPROPRIATION FOR THE LEGISLATIVE BRANCH OF STATE GOVERNMENT.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the legislative branch of state government for the purpose of defraying the expenses of that branch, for the fiscal period beginning with the effective date of this Act and ending June 30, 2009, as follows:

Subdivision 1.	
SIXTIETH AND SIXTY-FIRST LEGISLATIVE ASSEMBLIES AND BIENNIUM	
Salaries and wages	\$6,855,557
Operating expenses	2,998,431
Capital assets	206,000
National conference of state legislatures	206,314
Legislative applications replacements	<u>3,910,827</u>
Total general fund appropriation	\$14,177,129

Subdivision 2.	
LEGISLATIVE COUNCIL	
Salaries and wages	\$5,808,263
Operating expenses	2,638,467
Capital assets	<u>57,000</u>
Total general fund appropriation	\$8,503,730
Grand total general fund appropriation H.B. 1001	\$22,680,859

**SECTION 4. TRANSFERS.** Notwithstanding section 54-16-04, the director of the office of management and budget and the state treasurer shall make transfers of funds between line items of appropriations for the legislative council as may be requested by the chairman of the council or the chairman's designee upon the finding by the chairman or designee that the nature of studies and duties assigned to the council requires the transfers in properly carrying on the council's functions and duties. The director of the office of management and budget and the state treasurer shall similarly make transfers of funds between the line items for the sixtieth and

sixty-first legislative assemblies, upon request by the chairman of the legislative council or the chairman's designee upon the finding by the chairman or designee that the transfers are required for the legislative assembly to carry on its functions and duties.

**SECTION 5. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The total general fund appropriation line item in subdivision 1 of section 3 of this Act includes \$4,260,827 for the one-time funding items identified in this section. This amount is not a part of the agency's base budget to be used in preparing the 2009-11 executive budget. The legislative assembly shall report to the appropriations committees of the sixty-first legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2007, and ending June 30, 2009.

Legislative applications replacement system computer project	\$3,910,827
Computer equipment replacement	<u>350,000</u>
Total	\$4,260,827

**SECTION 6. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The total general fund appropriation line item in subdivision 2 of section 3 of this Act includes \$129,579 for the one-time funding items identified in this section. This amount is not a part of the agency's base budget to be used in preparing the 2009-11 executive budget. The legislative council shall report to the appropriations committees of the sixty-first legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2007, and ending June 30, 2009.

Computer equipment replacement	\$104,579
Office equipment replacement	<u>25,000</u>
Total	\$129,579

**SECTION 7. COMMITTEE ROOM RENOVATION FUNDING - EXPENDITURE DETERMINATION.** Any expenditure of funds relating to \$100,000 of the \$200,000 provided for committee room renovations in subdivision 1 of section 3 of this Act must be approved by a majority of the senate members of the legislative management committee. Any expenditures relating to the remaining \$100,000 for committee room renovations must be approved by a majority of the house of representatives members of the legislative management committee for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 8. LEGISLATIVE COUNCIL - REVIEW OF STAFF SERVICES - FUTURE STAFFING NEEDS.** The legislative council shall review legislative council staff services during the 2007-08 interim for the purpose of determining future legislative staffing needs. The review must include the appropriateness of the current organizational structure as it relates to future staffing needs and address the potential effect of the information technology applications system and pending retirements on staffing needs, succession planning, and knowledge transfer. Recommendations for staffing and organizational changes must be reflected in the legislative council's 2009-11 budget request.

<sup>1</sup> **SECTION 9. AMENDMENT.** Subdivision c of subsection 7 of section 54-03-20 of the North Dakota Century Code is amended and reenacted as follows:

- c. The majority and minority leaders of the house and senate and the chairman of the legislative council, if the chairman is not a majority or minority leader, are each entitled to receive as compensation, in addition to any other compensation or expense reimbursement provided by law, the sum of two hundred ~~ifty~~ sixty dollars per month during the biennium for their execution of public duties.

<sup>2</sup> **SECTION 10. AMENDMENT.** Subdivision c of subsection 7 of section 54-03-20 of the North Dakota Century Code is amended and reenacted as follows:

- c. The majority and minority leaders of the house and senate and the chairman of the legislative council, if the chairman is not a majority or minority leader, are each entitled to receive as compensation, in addition to any other compensation or expense reimbursement provided by law, the sum of two hundred ~~sixty~~ sixty seventy dollars per month during the biennium for their execution of public duties.

<sup>3</sup> **SECTION 11. AMENDMENT.** Subsection 1 of section 54-35-10 of the North Dakota Century Code is amended and reenacted as follows:

1. The members of the council and the members of any committee of the council are entitled to be compensated for the time spent in attendance at sessions of the council and of its committees at the rate of one hundred thirty-five dollars per day and must 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.

**SECTION 12. ADDITIONAL LODGING REIMBURSEMENT FOR APRIL 2007 - LEGISLATIVE ASSEMBLY.** Notwithstanding the \$900 per calendar month lodging maximum provided in section 54-03-20 for members of the legislative assembly during a legislative session, a member of the sixtieth legislative assembly is entitled to lodging reimbursement as provided in section 44-08-04 for state officers and employees for each calendar day the sixtieth legislative assembly is in session during the month of April 2007.

**SECTION 13. EFFECTIVE DATE.** Section 9 of this Act becomes effective on July 1, 2007, section 10 of this Act becomes effective on July 1, 2008, and section 11 of this Act becomes effective on July 1, 2009.

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<sup>1</sup> Section 54-03-20 was also amended by section 10 of House Bill No. 1001, chapter 1, section 1 of House Bill No. 1106, chapter 453, section 2 of House Bill No. 1106, chapter 453, section 3 of House Bill No. 1106, chapter 453, and section 4 of House Bill No. 1106, chapter 453.

<sup>2</sup> Section 54-03-20 was also amended by section 9 of House Bill No. 1001, chapter 1, section 1 of House Bill No. 1106, chapter 453, section 2 of House Bill No. 1106, chapter 453, section 3 of House Bill No. 1106, chapter 453, and section 4 of House Bill No. 1106, chapter 453.

<sup>3</sup> Section 54-35-10 was also amended by section 5 of House Bill No. 1106, chapter 453, and section 6 of House Bill No. 1106, chapter 453.

**SECTION 14. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 30, 2007  
Filed May 1, 2007

**CHAPTER 2****HOUSE BILL NO. 1002**(Appropriations Committee)  
(At the request of the Supreme Court)**JUDICIAL BRANCH**

AN ACT to provide an appropriation for defraying the expenses of the judicial branch; and to amend and reenact sections 27-02-02 and 27-05-03 of the North Dakota Century Code, relating to salaries of supreme and district court judges.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the judicial branch in section 3 of this Act as follows:

Subdivision 1.		
	SUPREME COURT	
Salaries and wages		\$6,522,911
Operating expenses		1,924,761
Capital assets		8,000
Judges retirement		134,931
Total general fund - Base level		<u>\$8,590,603</u>
Subdivision 2.		
	DISTRICT COURTS	
Salaries and wages		\$36,952,288
Operating expenses		11,222,655
Capital assets		185,500
Judges retirement		706,771
UND central legal research		80,000
Alternative dispute resolution		20,000
Total all funds - Base level		<u>\$49,167,214</u>
Less estimated income - Base level		<u>1,219,957</u>
Total general fund - Base level		<u>\$47,947,257</u>
Subdivision 3.		
	JUDICIAL CONDUCT COMMISSION AND DISCIPLINARY BOARD	
Judicial conduct commission and disciplinary board		<u>\$607,530</u>
Total all funds - Base level		<u>\$607,530</u>
Less estimated income - Base level		<u>287,521</u>
Total general fund - Base level		<u>\$320,009</u>
Total general fund - Section 1		\$56,857,869
Total other funds - Section 1		\$1,507,478
Total all funds - Section 1		<u>\$58,365,347</u>

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the judicial branch which are included in the appropriation in section 3 of this Act as follows:

Subdivision 1.	SUPREME COURT	
Salaries and wages		\$556,341
Operating expenses		224,424
Capital assets		88,000
Judges retirement		(12,700)
Total all funds - Adjustments/enhancements		\$856,065
Total general fund - Adjustments/enhancements		\$856,065

Subdivision 2.	DISTRICT COURTS	
Salaries and wages		\$5,196,049
Operating expenses		3,412,776
Capital assets		273,083
Judges retirement		(101,022)
UND central legal research		0
Alternative dispute resolution		0
Mediation		1,076,824
Total all funds - Adjustments/enhancements		\$9,857,710
Less estimated income - Adjustments/enhancements		681,721
Total general fund - Adjustments/enhancements		\$9,175,989

Subdivision 3.	JUDICIAL CONDUCT COMMISSION AND DISCIPLINARY BOARD	
Judicial conduct commission and disciplinary board		\$110,424
Total all funds - Adjustments/enhancements		\$110,424
Less estimated income - Adjustments/enhancements		11,835
Total general fund - Adjustments/enhancements		\$98,589
Total general fund - Section 2		\$10,130,643
Total other funds - Section 2		\$693,556
Total all funds - Section 2		\$10,824,199

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the judicial branch for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Subdivision 1.	SUPREME COURT	
Salaries and wages		\$7,079,252
Operating expenses		2,149,185
Capital assets		96,000
Judges retirement		122,231
Total all funds		\$9,446,668
Total general fund appropriation		\$9,446,668

Subdivision 2.	DISTRICT COURTS	
Salaries and wages		\$42,148,337
Operating expenses		14,635,431
Capital assets		458,583
Judges retirement		605,749
UND central legal research		80,000
Alternative dispute resolution		20,000

Mediation	1,076,824
Total all funds	\$59,024,924
Less estimated income	1,901,678
Total general fund appropriation	\$57,123,246

## Subdivision 3.

## JUDICIAL CONDUCT COMMISSION AND DISCIPLINARY BOARD

Judicial conduct commission and disciplinary board	\$717,954
Total all funds	\$717,954
Less estimated income	299,356
Total general fund appropriation	\$418,598
Grand total general fund appropriation	\$66,988,512
Grand total other funds appropriation	\$2,201,034
Grand total all funds appropriation	\$69,189,546

**SECTION 4. APPROPRIATION.** There are appropriated any funds received by the supreme court, district courts, and judicial conduct commission and disciplinary board, not otherwise appropriated, pursuant to federal acts and private gifts, grants, and donations for the purpose as designated in the federal acts or private gifts, grants, and donations for the period beginning July 1, 2007, and ending June 30, 2009.

**SECTION 5. 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 the transfers to carry on properly the functions of the judicial branch of government.

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

**27-02-02. Salaries of justices of supreme court.** The annual salary of each justice of the supreme court is one hundred ~~three~~ thirteen thousand ~~eighty-seven~~ five hundred ~~seventy-eight~~ dollars through June 30, ~~2006~~ 2008, and one hundred ~~seven~~ eighteen thousand ~~two~~ one hundred ~~ten~~ twenty-one dollars thereafter. The chief justice of the supreme court is entitled to receive an additional three thousand ~~fifteen~~ two hundred ~~sixty-two~~ dollars per annum through June 30, ~~2006~~ 2008, and three thousand ~~one~~ three hundred ~~thirty-six~~ ninety-two dollars per annum thereafter.

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

**27-05-03. Salaries and expenses of district judges.** The annual salary of each district judge is ~~ninety-four~~ one hundred ~~four~~ thousand ~~two~~ hundred ~~ninety-eight~~ seventy-three dollars through June 30, ~~2006~~ 2008, and ~~ninety-eight~~ one hundred ~~eight~~ thousand ~~seventy~~ two hundred ~~thirty-six~~ dollars thereafter. Each district judge is entitled to travel expenses, including mileage and subsistence while engaged in the discharge of official duties outside the city in which the judge's chambers are located. The salary and expenses are payable monthly in the manner provided by law. A presiding judge of a judicial district is entitled to receive an additional ~~two~~ three thousand ~~seven~~ hundred ~~seventy-nine~~ five dollars per annum through June 30, ~~2006~~ 2008, and ~~two~~ three thousand ~~eight~~ one hundred ~~ninety~~ twenty-six dollars thereafter.



**SECTION 8. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The total general fund appropriation line item in section 3 of this Act includes \$1,490,750 for the one-time funding items identified in this section. This amount is not a part of the agency's base budget to be used in preparing the 2009-11 executive budget. The supreme court shall report to the appropriations committees of the sixty-first legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2007, and ending June 30, 2009.

Enhanced records management system	\$115,750
Unified case management system	<u>1,375,000</u>
Total	\$1,490,750

Approved April 30, 2007  
Filed May 1, 2007

**CHAPTER 3****HOUSE BILL NO. 1003**

(Appropriations Committee)  
(At the request of the Governor)

**UNIVERSITY SYSTEM**

AN ACT to provide an appropriation for defraying the expenses of the North Dakota university system; to provide for transfer of funds; to authorize the state board of higher education to issue and sell bonds for capital projects; to limit student tuition rates; to provide for a legislative council study; to amend and reenact section 15-10-43 of the North Dakota Century Code, relating to the contract with the Kansas state university veterinary medical education program; to repeal section 15-12-27 of the North Dakota Century Code, relating to North Dakota state university's eighteenth street development fund; to provide for retroactive application; and to declare an emergency.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the North Dakota university system office and to the various entities and institutions under the supervision of the state board of higher education listed in section 3 of this Act as follows:

## Subdivision 1.

**NORTH DAKOTA UNIVERSITY SYSTEM OFFICE**

Capital assets	\$14,278,141
Competitive research	5,190,000
Board initiatives	1,885,000
System governance	5,568,422
Title II	695,600
Common information services	20,563,093
Operations pool	388,559
Equity pool	2,000,000
Contingency and capital emergency	436,923
Professional liability insurance	1,350,000
Student financial assistance grants	3,504,402
Professional student exchange program	2,127,280
Scholars program	862,077
Native American scholarships	251,988
Education incentive programs	1,227,902
Total all funds - Base level	\$60,329,387
Less estimated income - Base level	2,599,776
Total general fund - Base level	\$57,729,611

## Subdivision 2.

**BISMARCK STATE COLLEGE**

Operations	\$16,865,548
Capital assets	3,988,781
Total all funds - Base level	\$20,854,329
Less estimated income - Base level	3,745,300
Total general fund appropriation - Base level	\$17,109,029

Subdivision 3.		
	LAKE REGION STATE COLLEGE	
Operations		\$5,389,989
Capital assets		<u>387,537</u>
Total general fund appropriation - Base level		\$5,777,526
Subdivision 4.		
	WILLISTON STATE COLLEGE	
Operations		\$5,752,997
Capital assets		<u>8,136,475</u>
Total all funds - Base level		\$13,889,472
Less estimated income - Base level		<u>7,960,000</u>
Total general fund appropriation - Base level		\$5,929,472
Subdivision 5.		
	UNIVERSITY OF NORTH DAKOTA	
Operations		\$92,551,602
Capital assets		<u>100,132,099</u>
Total all funds - Base level		\$192,683,701
Less estimated income - Base level		<u>97,831,554</u>
Total general fund appropriation - Base level		\$94,852,147
Subdivision 6.		
	NORTH DAKOTA STATE UNIVERSITY	
Operations		\$75,804,650
Capital assets		<u>39,192,226</u>
Total all funds - Base level		\$114,996,876
Less estimated income - Base level		<u>37,500,000</u>
Total general fund appropriation - Base level		\$77,496,876
Subdivision 7.		
	NORTH DAKOTA STATE COLLEGE OF SCIENCE	
Operations		\$24,986,828
Capital assets		<u>3,558,252</u>
Total all funds - Base level		\$28,545,080
Less estimated income - Base level		<u>2,804,920</u>
Total general fund appropriation - Base level		\$25,740,160
Subdivision 8.		
	DICKINSON STATE UNIVERSITY	
Operations		\$14,711,627
Capital assets		<u>9,484,247</u>
Total all funds - Base level		\$24,195,874
Less estimated income - Base level		<u>9,100,557</u>
Total general fund appropriation - Base level		\$15,095,317
Subdivision 9.		
	MAYVILLE STATE UNIVERSITY	
Operations		\$9,003,630
Capital assets		<u>1,858,994</u>
Total all funds - Base level		\$10,862,624
Less estimated income - Base level		<u>1,500,000</u>
Total general fund appropriation - Base level		\$9,362,624

Subdivision 10.

MINOT STATE UNIVERSITY

Operations	\$27,215,849
Capital assets	<u>9,211,870</u>
Total all funds - Base level	\$36,427,719
Less estimated income - Base level	<u>8,535,000</u>
Total general fund appropriation - Base level	\$27,892,719

Subdivision 11.

VALLEY CITY STATE UNIVERSITY

Operations	\$11,806,526
Capital assets	<u>508,416</u>
Total general fund appropriation - Base level	\$12,314,942

Subdivision 12.

MINOT STATE UNIVERSITY - BOTTINEAU

Operations	\$4,334,460
Capital assets	<u>6,109,725</u>
Total all funds - Base level	\$10,444,185
Less estimated income - Base level	<u>6,000,000</u>
Total general fund appropriation - Base level	\$4,444,185

Subdivision 13.

UNIVERSITY OF NORTH DAKOTA SCHOOL OF MEDICINE AND HEALTH SCIENCES

Operations	<u>\$31,361,002</u>
Total general fund appropriation - Base level	\$31,361,002

Subdivision 14.

NORTH DAKOTA FOREST SERVICE

Operations	\$2,925,646
Capital assets	<u>101,638</u>
Total all funds - Base level	\$3,027,284
Less estimated income - Base level	<u>975,001</u>
Total general fund appropriation - Base level	\$2,052,283
Total general fund appropriation - Section 1	\$387,157,893
Total estimated income appropriation - Section 1	\$178,552,108
Total all funds appropriation - Section 1	\$565,710,001

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS**

**INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the North Dakota university system office and to the various entities and institutions under the supervision of the state board of higher education which are included in the appropriation in section 3 of this Act as follows:

Subdivision 1.

NORTH DAKOTA UNIVERSITY SYSTEM OFFICE AND INSTITUTIONS

Capital assets	\$2,225,971
Competitive research program	460,000
Board initiatives	(1,486,500)
System governance	314,972
Common information services	10,914,000
Operations pool	(388,559)
Equity pool	(2,000,000)

Contingency and capital emergency	(436,923)
Professional liability insurance	(250,000)
Student financial assistance grants	2,483,095
Professional student exchange program	595,666
Scholars program	616,489
Native American scholarships	128,638
Education incentive programs	<u>512,412</u>
Total all funds - Adjustments/enhancements	\$13,689,261
Less estimated income - Adjustments/enhancements	<u>2,817,754</u>
Total general fund - Adjustments/enhancements	\$10,871,507

## Subdivision 2.

## BISMARCK STATE COLLEGE

Operations	\$2,868,132
Capital assets	<u>2,707,161</u>
Total all funds - Adjustments/enhancements	\$5,575,293
Less estimated income - Adjustments/enhancements	<u>1,988,750</u>
Total general fund - Adjustments/enhancements	\$3,586,543

## Subdivision 3.

## LAKE REGION STATE COLLEGE

Operations	\$1,121,359
Capital assets	<u>2,745,667</u>
Total all funds - Adjustments/enhancements	\$3,867,026
Less estimated income - Adjustments/enhancements	<u>3,007,600</u>
Total general fund - Adjustments/enhancements	\$859,426

## Subdivision 4.

## WILLISTON STATE COLLEGE

Operations	\$869,507
Capital assets	<u>(5,879,277)</u>
Total all funds - Adjustments/enhancements	(\$5,009,770)
Less estimated income - Adjustments/enhancements	<u>(5,660,000)</u>
Total general fund - Adjustments/enhancements	\$650,230

## Subdivision 5.

## UNIVERSITY OF NORTH DAKOTA

Operations	\$14,460,228
Capital assets	<u>(18,303,224)</u>
Total all funds - Adjustments/enhancements	(\$3,842,996)
Less estimated income - Adjustments/enhancements	<u>(23,911,554)</u>
Total general fund - Adjustments/enhancements	\$20,068,558

## Subdivision 6.

## NORTH DAKOTA STATE UNIVERSITY

Operations	\$13,788,980
Capital assets	<u>4,016,935</u>
Total all funds - Adjustments/enhancements	\$17,805,915
Less estimated income - Adjustments/enhancements	<u>(3,000,000)</u>
Total general fund - Adjustments/enhancements	\$20,805,915

## Subdivision 7.

## NORTH DAKOTA STATE COLLEGE OF SCIENCE

Operations	\$2,753,540
Capital assets	<u>1,198,613</u>
Total all funds - Adjustments/enhancements	\$3,952,153

Less estimated income - Adjustments/enhancements	<u>565,500</u>
Total general fund - Adjustments/enhancements	\$3,386,653

## Subdivision 8.

## DICKINSON STATE UNIVERSITY

Operations	\$2,144,483
Capital assets	<u>(465,484)</u>
Total all funds - Adjustments/enhancements	\$1,678,999
Less estimated income - Adjustments/enhancements	<u>(1,100,557)</u>
Total general fund - Adjustments/enhancements	\$2,779,556

## Subdivision 9.

## MAYVILLE STATE UNIVERSITY

Operations	\$1,111,435
Capital assets	130,969
Total all funds - Adjustments/enhancements	\$1,242,404
Less estimated income - Adjustments/enhancements	<u>(600,000)</u>
Total general fund - Adjustments/enhancements	\$1,842,404

## Subdivision 10.

## MINOT STATE UNIVERSITY

Operations	\$2,879,273
Capital assets	<u>367,024</u>
Total all funds - Adjustments/enhancements	\$3,246,297
Less estimated income - Adjustments/enhancements	<u>(7,128,385)</u>
Total general fund - Adjustments/enhancements	\$10,374,682

## Subdivision 11.

## VALLEY CITY STATE UNIVERSITY

Operations	\$1,543,611
Capital assets	<u>2,487,819</u>
Total all funds - Adjustments/enhancements	\$4,031,430
Less estimated income - Adjustments/enhancements	<u>2,200,000</u>
Total general fund - Adjustments/enhancements	\$1,831,430

## Subdivision 12.

## MINOT STATE UNIVERSITY - BOTTINEAU

Operations	\$425,088
Capital assets	<u>(5,699,023)</u>
Total all funds - Adjustments/enhancements	(\$5,273,935)
Less estimated income - Adjustments/enhancements	<u>(5,748,000)</u>
Total general fund - Adjustments/enhancements	\$474,065

## Subdivision 13.

UNIVERSITY OF NORTH DAKOTA SCHOOL OF MEDICINE  
AND HEALTH SCIENCES

Operations	\$3,127,499
Total general fund - Adjustments/enhancements	\$3,127,499

## Subdivision 14.

## NORTH DAKOTA FOREST SERVICE

Operations	\$427,182
Capital assets	<u>78,566</u>
Total all funds - Adjustments/enhancements	\$505,748
Less estimated income - Adjustments/enhancements	<u>22,485</u>
Total general fund - Adjustments/enhancements	\$483,263

Total general fund - Section 2	\$81,141,731
Total estimated income - Section 2	(\$36,546,407)
Total all funds - Section 2	\$44,595,324

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the North Dakota university system office and the various entities and institutions under the supervision of the state board of higher education for the purpose of defraying the expenses of those entities and institutions, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Subdivision 1.

NORTH DAKOTA UNIVERSITY SYSTEM OFFICE AND INSTITUTIONS

Capital assets	\$16,504,112
Competitive research program	5,650,000
Board initiatives	398,500
System governance	5,883,394
Title II	695,600
Common information services	31,477,093
Professional liability insurance	1,100,000
Student financial assistance grants	5,987,497
Professional student exchange program	2,722,946
Scholars program	1,478,566
Native American scholarships	380,626
Education incentive programs	1,740,314
Total all funds	\$74,018,648
Less estimated income	5,417,530
Total general fund appropriation	\$68,601,118

Subdivision 2.

BISMARCK STATE COLLEGE

Operations	\$19,733,680
Capital assets	6,695,942
Total all funds	\$26,429,622
Less estimated income	5,734,050
Total general fund appropriation	\$20,695,572

Subdivision 3.

LAKE REGION STATE COLLEGE

Operations	\$6,511,348
Capital assets	3,133,204
Total all funds	\$9,644,552
Less estimated income	3,007,600
Total general fund appropriation	\$6,636,952

Subdivision 4.

WILLISTON STATE COLLEGE

Operations	\$6,622,504
Capital assets	2,257,198
Total all funds	\$8,879,702
Less estimated income	2,300,000
Total general fund appropriation	\$6,579,702

Subdivision 5.		
	UNIVERSITY OF NORTH DAKOTA	
Operations		\$107,011,830
Capital assets		<u>81,828,875</u>
Total all funds		\$188,840,705
Less estimated income		<u>73,920,000</u>
Total general fund appropriation		\$114,920,705

Subdivision 6.		
	NORTH DAKOTA STATE UNIVERSITY	
Operations		\$89,593,630
Capital assets		<u>43,209,161</u>
Total all funds		\$132,802,791
Less estimated income		<u>34,500,000</u>
Total general fund appropriation		\$98,302,791

Subdivision 7.		
	NORTH DAKOTA STATE COLLEGE OF SCIENCE	
Operations		\$27,740,368
Capital assets		<u>4,756,865</u>
Total all funds		\$32,497,233
Less estimated income		<u>3,370,420</u>
Total general fund appropriation		\$29,126,813

Subdivision 8.		
	DICKINSON STATE UNIVERSITY	
Operations		\$16,856,110
Capital assets		<u>9,018,763</u>
Total all funds		\$25,874,873
Less estimated income		<u>8,000,000</u>
Total general fund appropriation		\$17,874,873

Subdivision 9.		
	MAYVILLE STATE UNIVERSITY	
Operations		\$10,115,065
Capital assets		<u>1,989,963</u>
Total all funds		\$12,105,028
Less estimated income		<u>900,000</u>
Total general fund appropriation		\$11,205,028

Subdivision 10.		
	MINOT STATE UNIVERSITY	
Operations		\$30,095,122
Capital assets		<u>9,578,894</u>
Total all funds		\$39,674,016
Less estimated income		<u>1,406,615</u>
Total general fund appropriation		\$38,267,401

Subdivision 11.		
	VALLEY CITY STATE UNIVERSITY	
Operations		\$13,350,137
Capital assets		<u>2,996,235</u>
Total all funds		\$16,346,372
Less estimated income		<u>2,200,000</u>
Total general fund appropriation		\$14,146,372



## Subdivision 12.

## MINOT STATE UNIVERSITY - BOTTINEAU

Operations	\$4,759,548
Capital assets	<u>410,702</u>
Total all funds	\$5,170,250
Less estimated income	<u>252,000</u>
Total general fund appropriation	\$4,918,250

## Subdivision 13.

UNIVERSITY OF NORTH DAKOTA SCHOOL OF MEDICINE  
AND HEALTH SCIENCES

Operations	\$34,488,501
Total general fund appropriation	<u>\$34,488,501</u>

## Subdivision 14.

## NORTH DAKOTA FOREST SERVICE

Operations	\$3,352,828
Capital assets	<u>180,204</u>
Total all funds	\$3,533,032
Less estimated income	<u>997,486</u>
Total general fund appropriation	\$2,535,546
Total general fund appropriation - Section 3	\$468,299,624
Total estimated income appropriation - Section 3	\$142,005,701
Total all funds appropriation - Section 3	\$610,305,325
Grand total general fund appropriation - H.B. 1003	\$468,449,624
Grand total estimated income appropriation - H.B. 1003	\$164,719,701
Grand total all funds appropriation - H.B. 1003	\$633,169,325

**SECTION 4. APPROPRIATION.** There is appropriated out of any moneys in the general fund, not otherwise appropriated, the sum of \$150,000, or so much of the sum as may be necessary, to Dickinson state university for the purpose of providing one-time startup funding for establishing a Theodore Roosevelt center, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 5. BOARD INITIATIVES - REPORT TO THE SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The board initiatives line item in subdivision 1 of section 3 of this Act includes the sum of \$300,000 for a grant to the space grant consortium to match federal funds and the sum of \$98,500 for a recruiting initiative for Minot state university - Bottineau. The funding for the initiative is provided for a two-year pilot basis. Minot state university - Bottineau shall report on the effectiveness of the initiative to the appropriations committees of the sixty-first legislative assembly.

**SECTION 6. CAPITAL ASSETS.** The sum of \$15,754,112, or so much of the sum as may be necessary, included in the capital assets line item in subdivision 1 of section 3 of this Act, must be used by the state board of higher education to satisfy outstanding bond obligations.

**SECTION 7. COMMON INFORMATION SERVICES.** The sum of \$31,477,093, or so much of the sum as may be necessary, included in the common information services line item in subdivision 1 of section 3 of this Act, must be used for the benefit of the institutions and entities under the control of the state board of higher education, as determined by the board. Funding allocations are to be made based on the North Dakota university system information technology plan and technology priorities. Funds allocated pursuant to this section must be used to

support the higher education computer network, the interactive video network, the on-line Dakota information network, connectND, northern tier network, and other related technology initiatives as determined by the board.

**SECTION 8. CAPITAL ASSETS - MAYVILLE STATE UNIVERSITY.** The sum of \$750,000, or so much of the sum as may be necessary, included in the capital assets line item in subdivision 1 of section 3 of this Act, may be used for the development of a master capital plan and for deferred maintenance projects at Mayville state university as approved by the board.

**SECTION 9. STUDENT LOAN TRUST FUND.** Section 3 of this Act includes the sum of \$523,380, or so much of the sum as may be necessary, from the student loan trust fund for the professional student exchange program, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 10. PERMANENT OIL TAX TRUST FUND.** Section 3 of this Act includes the sum of \$7,783,315, or so much of the sum as may be necessary, from the permanent oil tax trust fund of which \$2,773,800 is for northern tier network infrastructure, \$4,109,515 is for streamline projects at the state college of science, Valley City state university, and Minot state university - Bottineau, and \$900,000 is for the service rig program at Williston state college, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 11. FEDERAL, PRIVATE, AND OTHER FUNDS - APPROPRIATION.** All funds, in addition to those appropriated in section 3 of this Act, from federal, private, and other sources, received by the institutions and entities under the control of the state board of higher education are appropriated to those institutions and entities, for the biennium beginning July 1, 2007, and ending June 30, 2009. All additional funds received under the North Dakota-Minnesota reciprocity agreement during the biennium beginning July 1, 2007, and ending June 30, 2009, are appropriated to the state board of higher education for reimbursement to institutions under the control of the board.

**SECTION 12. TRANSFER AUTHORITY.** If, during the biennium beginning July 1, 2007, and ending June 30, 2009, the state board of higher education determines that funds allocated to campus operations in section 3 of this Act are needed for capital projects or extraordinary repairs, the board may transfer funds from operations to capital assets. The board shall report any transfer of funds under this section to the office of management and budget.

**SECTION 13. FULL-TIME EQUIVALENT POSITION ADJUSTMENTS.** The state board of higher education is authorized to adjust full-time equivalent positions as needed, subject to the availability of funds, for institutions and entities under its control. The university system shall report any adjustments to the office of management and budget before the submission of the 2009-11 biennium budget request.

**SECTION 14. EDUCATION INCENTIVE PROGRAMS.** The funding appropriated for education incentive programs in subdivision 1 of section 3 of this Act may be allocated to education incentive programs as determined by the state board of higher education, including the reduction or elimination of specific programs, and the state board of higher education may determine the appropriate number of years of program eligibility for each education incentive program.

**SECTION 15. BISMARCK STATE COLLEGE NATIONAL ENERGY CENTER OF EXCELLENCE BUILDING.** The state board of higher education may

enter into an agreement or agreements with the Bismarck state college foundation or other private entity and do all things necessary and proper to authorize construction by the foundation or other private entity of a national energy center of excellence building on the Bismarck state college campus using state funds, federal funds, donations, gifts, or other private funds.

**SECTION 16. BOND ISSUANCE AUTHORIZATION - PURPOSES - APPROPRIATION.** The state board of higher education, in accordance with chapter 15-55, may arrange for the funding of projects authorized in this section, declared to be in the public interest, through the issuance of self-liquidating, tax-exempt evidences of indebtedness under chapter 15-55, beginning with the effective date of this Act and ending June 30, 2009. Evidences of indebtedness issued pursuant to this section are not a general obligation of the state of North Dakota. Any unexpended balance resulting from the proceeds of the evidences of indebtedness must be placed in a sinking fund to be used for the retirement of indebtedness. The evidences of indebtedness may be issued and the proceeds are appropriated, for the biennium beginning July 1, 2007, and ending June 30, 2009, for the purpose of financing the following capital projects:

University of North Dakota - Wilkerson dining center	\$4,000,000
North Dakota state university - Living learning center west and Ceres hall	12,000,000
North Dakota state college of science - Robertson hall	6,000,000
North Dakota state college of science - Parking lot	<u>714,000</u>
Total special funds appropriation	\$22,714,000

**SECTION 17. LEGISLATIVE INTENT - HIGHER EDUCATION ACCOUNTABILITY MEASURES.** It is the intent of the legislative assembly that the state board of higher education's performance and accountability report as required by section 15-10-14.2 include an executive summary and information regarding:

1. Education excellence, including:
  - a. Student performance on nationally recognized examinations in their major fields compared to the national averages.
  - b. First-time licensure pass rates compared to other states.
  - c. Alumni-reported and student-reported satisfaction with preparation in selected major, acquisition of specific skills, and technology knowledge and abilities.
  - d. Employer-reported satisfaction with preparation of recently hired graduates.
  - e. Biennial report on employee satisfaction relating to the university system and local institutions.
  - f. Student graduation and retention rates.
2. Economic development, including:
  - a. Enrollment in entrepreneurship courses and the number of graduates of entrepreneurship programs.

- b. Percentage of university system graduates obtaining employment appropriate to their education in the state.
  - c. Number of businesses and employees in the region receiving training.
3. Student access, including number and proportion of enrollments in courses offered by nontraditional methods.
4. Student affordability, including:
  - a. Tuition and fees on a per student basis compared to the regional average.
  - b. Tuition and fees as a percentage of median North Dakota household income.
  - c. Cost per student in terms of general fund appropriations and total university system funding.
  - d. Per capita general fund appropriations for higher education.
  - e. State general fund appropriation levels for university system institutions compared to peer institutions general fund appropriation levels.
5. Financial operations, including:
  - a. Cost per student and percentage distribution by major function.
  - b. Ratio measuring the funding derived from operating and contributed income compared to total university system funding.
  - c. Ratio measuring the amount of expendable net assets as compared to the amount of long-term debt.
  - d. Research expenditures in proportion to the amount of revenue generated by research activity and funding received for research activity.
  - e. Ratio measuring the amount of expendable fund balances divided by total expenditures and mandatory transfers.
  - f. Ratio measuring net total revenues divided by total current revenues.

**SECTION 18. TUITION RATE INCREASES - LIMIT - BUDGET SECTION APPROVAL.** Notwithstanding any other provision of law, the state board of higher education shall limit any annual tuition increase for students attending institutions under its control for the 2007-08 and 2008-09 academic years to not more than five percent for each year unless the board receives prior budget section approval.

**SECTION 19. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The grand total appropriation in section 3 of this Act includes \$28,382,068 from the general fund and \$7,583,315 from the permanent oil tax trust fund for one-time funding items identified

in this section. This amount is not part of the institutions' base budgets to be used in preparing the 2009-11 executive budget. The North Dakota university system shall report to the appropriations committees of the sixty-first legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2007, and ending June 30, 2009.

Northern tier network infrastructure from permanent oil tax trust fund	\$2,773,800
ConnectND system support	2,300,000
Common information system pool parity funding	420,000
Deferred maintenance	10,893,033
Capital projects	13,808,235
Capital projects from permanent oil tax trust fund	4,809,515
Campus initiatives	<u>960,800</u>
Total	\$35,965,383

**SECTION 20. USE OF UNSPENT 2005-07 GENERAL FUND APPROPRIATIONS.** The state board of higher education shall use \$200,000 of the North Dakota university system office unspent 2005-07 general fund appropriation authorized to continue under section 54-44.1-11 for completing and furnishing the thatcher hall renovation and addition at Minot state university - Bottineau for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 21. LEGISLATIVE INTENT - NORTHERN TIER NETWORK.** It is the intent of the sixtieth legislative assembly that higher education institutions utilizing the northern tier network be responsible for funding the related ongoing maintenance costs for the network.

**SECTION 22. NORTH DAKOTA STATE UNIVERSITY - COLLEGE OF BUSINESS BUILDING.** The state board of higher education may enter an agreement or agreements with the North Dakota state university foundation or other private entity and do all things necessary and proper to authorize construction by the foundation or other private entity of a college of business building off the North Dakota state university campus, using donations, gifts, or other private funds.

**SECTION 23. LEGISLATIVE COUNCIL STUDY - HIGHER EDUCATION.**

1. The legislative council shall consider appointing a higher education committee for the 2007-08 interim. If appointed, the committee shall spend a majority of time studying the means by which the North Dakota university system can further contribute to developing and attracting the human capital to meet North Dakota's economic and workforce needs, and if time allows, the committee may visit select higher education institutions.
2. The study must focus on ways to increase postsecondary access, improve the quality of education, contain costs and other means, including productivity, to maximize the usage of the North Dakota university system in meeting the human capital needs of the state.
3. The study must include a review of policy recommendations, as appropriate, which address the postsecondary delivery system, including the mix of institutions, educational attainment gaps, degree production gaps, recruitment and retention of students, and workforce training needs.

4. The study must include a review of the impact of the state's changing demographics on the university system long-term financing plan.
5. The study must recommend goals for each of the higher education cornerstones.
6. The study may include the use of a higher education roundtable format.
7. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.
8. The state board of higher education also shall take the recommendations into account and make appropriate changes to practices, board policy, and budget needs and allocation.

**SECTION 24. LEGISLATIVE COUNCIL STUDY - PROFESSIONAL STUDENT EXCHANGE PROGRAMS.** The legislative council shall consider studying, during the 2007-08 interim, higher education professional student exchange programs. The study should include review of:

1. The amount of annual tuition and fees paid by students for health care-related professional education programs.
2. The amount of annual support fees paid by the state for health care-related professional education programs.
3. The number of state-supported slots funded and demand for state-supported slots, including the consideration of basing the number of slots on the estimated workforce needs to fill positions due to retirements, geographic, and professional specific service needs.
4. The present repayment provisions and loan forgiveness programs to determine cost-effectiveness, equality issues, and development of program enhancements that would aid in the recruitment of professional students to return to the state to practice their chosen profession.
5. Discontinuation of the contracts with the western interstate commission on higher education for access to veterinary medicine programs and consideration of negotiating contracts for veterinary medicine with Kansas, Iowa, and Minnesota.

The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 25. LEGISLATIVE INTENT - BISMARCK FAMILY PRACTICE CENTER.** It is the intent of the sixtieth legislative assembly that the university of North Dakota school of medicine and health sciences may construct, renovate, remodel, purchase, or lease a building for the Bismarck family practice center.

<sup>4</sup> **SECTION 26. AMENDMENT.** Section 15-10-43 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-43. Veterinary medical education program - Kansas state university - Contract.**

1. In addition to any contracts under section 15-10-28.2, the state board of higher education may contract with Kansas state university to provide an opportunity for up to five eligible students to enroll in the veterinary medical education program at Kansas state university.
2. Eligible students must be residents of this state and must have been selected for enrollment by an admissions committee consisting of one faculty member from the department of veterinary and microbiological sciences at North Dakota state university, one veterinarian practicing in this state, one member of the legislative assembly, and one livestock producer, all of whom must be appointed by the legislative council, and the chairman of the admissions committee at the Kansas state university school of veterinary medicine. The legislative council and the chairman of the admissions committee at the Kansas state university school of veterinary medicine may select an alternative for each of the designated positions to serve as necessary.
3. The admissions committee shall determine the criteria to be used in the selection of eligible students, with eligible students interested in large animal veterinary medicine receiving a priority.
4. As a condition of selection under this program, an eligible student shall agree to practice veterinary medicine in this state for a period of three years upon graduation. If a student fails to fulfill the commitment for practice in this state, the student shall repay to the state board of higher education all moneys forwarded to or for the student under this Act, on a proportionate basis.

<sup>5</sup> **SECTION 27. AMENDMENT.** Section 15-10-43 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-43. Veterinary medical education program - Kansas state university - Contract.**

1. In addition to any contracts under section 15-10-28.2, the state board of higher education may contract with Kansas state university to provide an opportunity for up to five eligible students to enroll in the veterinary medical education program at Kansas state university.
2. Eligible students must be residents of this state and must have been selected for enrollment by an admissions committee consisting of one faculty member from the department of veterinary and microbiological

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<sup>4</sup> Section 15-10-43 was also amended by section 27 of House Bill No. 1003, chapter 3.

<sup>5</sup> Section 15-10-43 was also amended by section 26 of House Bill No. 1003, chapter 3.

sciences at North Dakota state university, one veterinarian practicing in this state, one member of the legislative assembly, and one livestock producer, all of whom must be appointed by the legislative council, and the chairman of the admissions committee at the Kansas state university school of veterinary medicine.

3. The admissions committee shall determine the criteria to be used in the selection of eligible students, with eligible students interested in large animal veterinary medicine receiving a priority.
4. ~~As a condition of selection under this program, an eligible student shall agree to practice veterinary medicine in this state for a period of three years upon graduation. If a student fails to fulfill the commitment for practice in this state, the student shall repay to the state board of higher education all moneys forwarded to or for the student under this Act, on a proportionate basis.~~

**SECTION 28. REPEAL.** Section 15-12-27 of the North Dakota Century Code is repealed.

**SECTION 29. RETROACTIVE APPLICATION.** Section 27 of this Act applies retroactively to students participating in the Kansas state university veterinary medicine program.

**SECTION 30. EMERGENCY.** The capital assets and professional student exchange program line items contained in section 3 of this Act and sections 4, 8, 15, 16, and 22 of this Act are declared to be an emergency measure.

Approved April 30, 2007  
Filed May 1, 2007



**CHAPTER 4****HOUSE BILL NO. 1004**

(Appropriations Committee)  
(At the request of the Governor)

**STATE DEPARTMENT OF HEALTH**

AN ACT to provide an appropriation for defraying the expenses of the state department of health; to create and enact a new section to chapter 23-39 of the North Dakota Century Code, relating to collecting fees for tanning facility inspections; to amend and reenact section 23-01-05.3 of the North Dakota Century Code, relating to tracking immunizations; to provide legislative intent; to allow the acceptance and expenditure of certain moneys; to provide for a demonstration project; to provide for a legislative council study; to provide a continuing appropriation; to provide for a report to the legislative council; and to provide an expiration date.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the state department of health in section 3 of this Act as follows:

Salaries and wages	\$32,342,513
Operating expenses	25,613,981
Capital assets	1,514,469
Grants	41,832,166
Tobacco prevention and control	8,685,995
WIC food payments	<u>15,750,000</u>
Total all funds - Base level	\$125,739,124
Less estimated income - Base level	<u>112,270,220</u>
Total general fund - Base level	\$13,468,904

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the state department of health which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$5,405,392
Operating expenses	20,082,693
Capital assets	302,914
Grants	14,875,610
Tobacco prevention and control	233,351
WIC food payments	<u>1,800,000</u>
Total all funds - Adjustments/enhancements	\$42,699,960
Less estimated income - Adjustments/enhancements	<u>36,941,901</u>
Total general fund - Adjustments/enhancements	\$5,758,059

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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 department of health for the

purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Salaries and wages	\$37,747,905
Operating expenses	45,696,674
Capital assets	1,817,383
Grants	56,707,776
Tobacco prevention and control	8,919,346
WIC food payments	17,550,000
Total all funds	\$168,439,084
Less estimated income	149,212,121
Total general fund appropriation	\$19,226,963

**SECTION 4. ENVIRONMENT AND RANGELAND PROTECTION FUND.**

The estimated income line item included in section 3 of this Act includes \$266,119, or so much of the sum as may be necessary, to be made available to the state department of health from the environment and rangeland protection fund, for the biennium beginning July 1, 2007, and ending June 30, 2009. This amount includes \$50,000 for a grant to the North Dakota stockmen's association environmental services program.

**SECTION 5. INTENT - INDIRECT COST RECOVERIES.** Notwithstanding section 54-44.1-14, the state department of health may deposit indirect cost recoveries in its operating account.

**SECTION 6. AMENDMENT.** Section 23-01-05.3 of the North Dakota Century Code is amended and reenacted as follows:

**23-01-05.3. Immunization data.**

- The state department of health may establish an immunization information system and may require the childhood immunizations specified in subsection 1 of section 23-07-17.1 and other information be reported to the department. The state department of health may only require the reporting of childhood immunizations and other data upon completion of the immunization information reporting system. A health care provider who administers a childhood immunization shall report the patient's identifying information, the immunization that is administered, and other required information to the department. The report must be submitted using electronic media, and must contain the data content and use the format and codes specified by the department.
- Notwithstanding any other provision of law, a health care provider, elementary or secondary school, early childhood facility, public or private postsecondary educational institution, city or county board of health, district health unit, and the state health officer may exchange immunization data in any manner with one another. Immunization data that may be exchanged under this section is limited to the date and type of immunization administered to a patient and may be exchanged regardless of the date of the immunization.

**SECTION 7.** A new section to chapter 23-39 of the North Dakota Century Code is created and enacted as follows:

**License fees.** The fees established by the department must be based on the cost of conducting routine and complaint inspections, enforcement action, and

preparing and sending license renewals. License fees collected pursuant to this chapter must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly. The department shall waive all or a portion of the license fee for any tanning facility that is subject to local jurisdiction.

The department shall accept city or county enforcement of this chapter if the department determines the city or county requirements meet or exceed the requirements of this chapter and any rules promulgated under this chapter.

**SECTION 8. LEGISLATIVE COUNCIL STUDY - EMERGENCY MEDICAL SERVICES.** The legislative council shall consider studying, during the 2007-08 interim, the emergency medical services system within the state, including the funding, demographics, and impact on rural areas. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 9. LEGISLATIVE INTENT - CHILDHOOD IMMUNIZATION PROGRAM FUNDING.** It is the intent of the sixtieth legislative assembly that the funding appropriated in House Bill No. 1435 be used only for a childhood immunization program and is limited to the lesser of the total appropriation or the amount necessary for the childhood immunization program.

**SECTION 10. ACCEPTANCE AND EXPENDITURE OF CERTAIN MONEYS.** The sixtieth legislative assembly's action on House Bill No. 1004 does not preclude the university of North Dakota from receiving and spending federal and other funds pursuant to North Dakota Century Code sections 54-16-04.1 and 54-16-04.2.

**SECTION 11. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The total general fund appropriation line item in section 3 of this Act includes \$2,010,135 for the one-time funding items identified in this section. This amount is not a part of the agency's base budget to be used in preparing the 2009-11 executive budget. The state department of health shall report to the appropriations committees of the sixty-first legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2007, and ending June 30, 2009.

An antiviral stockpile in case of severe influenza outbreak \$2,010,135

**SECTION 12. DEMONSTRATION PROJECT FOR VOLUNTARY SURVEYS DURING MAJOR CONSTRUCTION OR RENOVATION OF BASIC CARE AND LONG-TERM CARE FACILITIES - CONTINUING APPROPRIATION - REPORT TO LEGISLATIVE COUNCIL.**

1. During the 2007-09 biennium, the state department of health shall design and implement a demonstration project through which the department offers a life safety survey process for basic care facilities and long-term care facilities to access voluntarily during and at the conclusion of a construction project, renovation project, or construction and renovation project that costs more than three million dollars.
2. The department may charge a reasonable fee for a life safety survey performed under this section to cover the food, lodging, and transportation expenses of surveyors performing the surveys. Revenues derived from the fees collected under this subsection must be

deposited in the state department of health's operating fund in the state treasury and are appropriated as a continuing appropriation to the state department of health for the purpose of funding the demonstration project under this section.

3. The department shall design and perform the demonstration project in a manner that will provide the surveyor who performs a life safety survey under this section does not violate the federal requirements associated with medicare certified life safety surveys. The department shall perform the demonstration project within the department's 2007-09 appropriation and staffing levels.
4. Before August 1, 2008, the department shall provide a report to the legislative council regarding the status of the demonstration project, including the feasibility and desirability of making the program permanent and whether the department will be recommending any legislation to make the program permanent.

**SECTION 13. EXPIRATION DATE.** Section 12 of this Act is effective through June 30, 2009, and after that date is ineffective.

Approved May 4, 2007

Filed May 4, 2007

**CHAPTER 5****HOUSE BILL NO. 1005**

(Appropriations Committee)  
(At the request of the Governor)

**INDIAN AFFAIRS COMMISSION**

AN ACT to provide an appropriation for defraying the expenses of the Indian affairs commission.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the Indian affairs commission in section 3 of this Act as follows:

Salaries and wages	\$343,402
Operating expenses	63,895
Total all funds - Base level	\$407,297
Less estimated income - Base level	20,000
Total general fund - Base level	\$387,297

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the Indian affairs commission which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$142,457
Operating expenses	22,000
Total all funds - Adjustments/enhancements	\$164,457
Less estimated income - Adjustments/enhancements	(15,000)
Total general fund - Adjustments/enhancements	\$179,457

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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 Indian affairs commission for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Salaries and wages	\$485,859
Operating expenses	85,895
Total all funds	\$571,754
Less estimated income	5,000
Total general fund appropriation	\$566,754

**SECTION 4. INTENT - INDIAN EDUCATION COORDINATOR POSITION.** The Indian affairs commission shall report to the sixty-first legislative assembly on the progress of the Indian education coordination program.

Approved April 30, 2007  
Filed May 1, 2007

**CHAPTER 6****HOUSE BILL NO. 1006**(Appropriations Committee)  
(At the request of the Governor)**AERONAUTICS COMMISSION**

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

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the aeronautics commission in section 3 of this Act as follows:

Salaries and wages	\$716,099
Operating expenses	1,892,706
Capital assets	134,000
Grants	<u>3,047,500</u>
Total all funds - Base level	\$5,790,305
Less estimated income - Base level	<u>5,240,118</u>
Total general fund - Base level	\$550,187

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the aeronautics commission which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$87,441
Operating expenses	67,598
Capital assets	600,000
Grants	<u>527,500</u>
Total all funds - Adjustments/enhancements	\$1,282,539
Less estimated income - Adjustments/enhancements	<u>1,282,726</u>
Total general fund - Adjustments/enhancements	(\$187)

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the aeronautics commission for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Salaries and wages	\$803,540
Operating expenses	1,960,304
Capital assets	734,000
Grants	3,575,000
Total all funds	\$7,072,844
Less estimated income	<u>6,522,844</u>
Total general fund appropriation	\$550,000

Approved April 26, 2007  
Filed April 27, 2007

**CHAPTER 7****HOUSE BILL NO. 1007**(Appropriations Committee)  
(At the request of the Governor)**VETERANS' HOME AND DEPARTMENT OF  
VETERANS' AFFAIRS**

AN ACT to provide an appropriation for defraying the expenses of the veterans' home and department of veterans' affairs; and to declare an emergency.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the veterans' home and department of veterans' affairs in section 3 of this Act as follows:

Subdivision 1.	VETERANS' HOME	
Salaries and wages		\$7,778,541
Operating expenses		3,174,778
Capital assets		350,606
Total all funds - Base level		\$11,303,925
Less estimated income - Base level		6,974,833
Total general fund - Base level		\$4,329,092

Subdivision 2.	VETERANS' AFFAIRS	
Veterans' affairs		\$653,668
Total general fund - Base level		\$653,668
Total general fund - Section 1		\$4,982,760
Total special funds - Section 1		\$6,974,833
Total all funds - Section 1		\$11,957,593

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the veterans' home and department of veterans' affairs which are included in the appropriation in section 3 of this Act as follows:

Subdivision 1.	VETERANS' HOME	
Salaries and wages		\$1,061,980
Operating expenses		337,222
Capital assets		(20,259)
Life safety improvements		265,700
Total all funds - Adjustments/enhancements		\$1,644,643
Less estimated income - Adjustments/enhancements		1,846,257
Total general fund - Adjustments/enhancements		(\$201,614)



## Subdivision 2.

## VETERANS' AFFAIRS

Veterans' affairs	\$213,680
Total general fund - Adjustments/enhancements	<u>\$213,680</u>
Total general fund - Section 2	\$12,066
Total special funds - Section 2	\$1,846,257
Total all funds - Section 2	\$1,858,323

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the veterans' home and department of veterans' affairs for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

## Subdivision 1.

## VETERANS' HOME

Salaries and wages	\$8,840,521
Operating expenses	3,512,000
Capital assets	330,347
Life safety improvements	265,700
Total all funds	\$12,948,568
Less estimated income	8,821,090
Total general fund appropriation	\$4,127,478

## Subdivision 2.

## VETERANS' AFFAIRS

Veterans' affairs	\$867,348
Total general fund appropriation	<u>\$867,348</u>
Grand total general fund appropriation - H.B. 1007	\$4,994,826
Grand total special funds appropriation - H.B. 1007	\$8,821,090
Grand total all funds appropriation - H.B. 1007	\$13,815,916

**SECTION 4. PREPLANNING FUNDS - REIMBURSEMENT TO GENERAL FUND.** The \$100,000 appropriated for preplanning costs for the new veterans' home in section 3 of this Act is to be included as part of the overall cost of the construction project and the veterans' home is to reimburse the general fund the \$100,000 prior to June 30, 2009, from federal matching funds available for this project.

**SECTION 5. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The total general fund appropriation in section 3 of this Act includes \$265,700 for the veterans' home and \$59,606 for the department of veterans' affairs for the one-time funding items identified in this section. This amount is not a part of the agencies' base budgets to be used in preparing the 2009-11 executive budget. The veterans' home and department of veterans' affairs shall report to the appropriations committees of the sixty-first legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2007, and ending June 30, 2009.

Life safety improvements and preplanning	\$265,700
Secure filing system	38,250
Electronic storing and retrieving system	<u>21,356</u>
Total	\$325,306

**SECTION 6. EMERGENCY.** The appropriation of \$265,700 included in subdivision 1 of section 3 of this Act for life safety improvements and preplanning is declared to be an emergency measure.

Approved April 30, 2007  
Filed May 1, 2007

**CHAPTER 8****HOUSE BILL NO. 1008**(Appropriations Committee)  
(At the request of the Governor)**DEPARTMENT OF FINANCIAL INSTITUTIONS**

AN ACT to provide an appropriation for defraying the expenses of the department of financial institutions.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the department of financial institutions in section 3 of this Act as follows:

Salaries and wages	\$3,412,279
Operating expenses	811,982
Capital assets	7,500
Contingency	20,000
Money transmitters	<u>193,742</u>
Total special funds - Base level	\$4,445,503

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the department of financial institutions which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$718,567
Operating expenses	219,032
Capital assets	(7,500)
Money transmitters	<u>(193,742)</u>
Total special funds - Adjustments/enhancements	\$736,357

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the financial institutions regulatory fund in the state treasury, not otherwise appropriated, to the department of financial institutions for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Salaries and wages	\$4,130,846
Operating expenses	1,031,014
Contingency	<u>20,000</u>
Total special funds appropriation	\$5,181,860

Approved March 23, 2007  
Filed March 23, 2007

**CHAPTER 9**

**HOUSE BILL NO. 1009**

(Appropriations Committee)  
(At the request of the Governor)

**STATE FAIR ASSOCIATION**

AN ACT to provide an appropriation for defraying the expenses of the state fair association; and to provide for a report to the budget section.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the state fair association in section 3 of this Act as follows:

Capital assets	\$210,000
Premiums	<u>405,000</u>
Total general fund - Base level	\$615,000

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the state fair association which are included in the appropriation in section 3 of this Act as follows:

Capital assets	\$515,000
Premiums	<u>37,150</u>
Total general fund appropriation - Adjustments/enhancements	\$552,150

**SECTION 3. APPROPRIATION FOR THE STATE FAIR ASSOCIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from other income of the state fair association to the state fair association for the purpose of defraying the expenses of the state fair association, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Capital assets	\$725,000
Premiums	<u>442,150</u>
Total general fund appropriation	\$1,167,150

**SECTION 4. REPORT TO THE BUDGET SECTION.** The state fair association shall provide a report to the budget section prior to July 1, 2008, regarding the status of constructing a new grandstand on the state fairgrounds, including the status of developing a business plan and the progress of fundraising efforts.

Approved April 30, 2007  
Filed May 1, 2007

**CHAPTER 10****HOUSE BILL NO. 1010**

(Appropriations Committee)  
(At the request of the Governor)

**COUNCIL ON THE ARTS**

AN ACT to provide an appropriation for defraying the expenses of the council on the arts.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the council on the arts in section 3 of this Act as follows:

Salaries and wages	\$455,466
Operating expenses	227,986
Grants	1,476,257
Lewis and Clark bicentennial	108,300
Total all funds - Base level	\$2,268,009
Less estimated income - Base level	1,268,318
Total general fund - Base level	\$999,691

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the council on the arts which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$137,019
Operating expenses	18,876
Grants	139,021
Lewis and Clark bicentennial	(108,300)
Total all funds - Adjustments/enhancements	\$186,616
Less estimated income - Adjustments/enhancements	20,000
Total general fund - Adjustments/enhancements	\$166,616

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the council on the arts for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Salaries and wages	\$592,485
Operating expenses	246,862
Grants	1,615,278
Total all funds	\$2,454,625
Less estimated income	1,288,318
Total general fund appropriation	\$1,166,307

**SECTION 4. APPROPRIATION.** All income from the cultural endowment fund is appropriated to the council on the arts for the furthering of the cultural arts in the state for the biennium beginning July 1, 2007, and ending June 30, 2009.

Approved April 11, 2007  
Filed April 13, 2007

**CHAPTER 11****HOUSE BILL NO. 1011**(Appropriations Committee)  
(At the request of the Governor)**HIGHWAY PATROL**

AN ACT to provide an appropriation for defraying the expenses of the highway patrol and to authorize line item transfers.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the highway patrol in section 3 of this Act as follows:

Administration	\$2,361,511
Field operations	30,998,822
Law enforcement training academy	<u>1,459,275</u>
Total all funds - Base level	\$34,819,608
Less estimated income - Base level	<u>14,738,746</u>
Total general fund - Base level	\$20,080,862

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the highway patrol which are included in the appropriation in section 3 of this Act as follows:

Administration	\$206,505
Field operations	4,163,565
Law enforcement training academy	<u>(57,986)</u>
Total all funds - Adjustments/enhancements	\$4,312,084
Less estimated income - Adjustments/enhancements	<u>(3,518,326)</u>
Total general fund - Adjustments/enhancements	\$7,830,410

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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 for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Administration	\$2,568,016
Field operations	35,162,387
Law enforcement training academy	<u>1,401,289</u>
Total all funds	\$39,131,692
Less estimated income	<u>11,220,420</u>
Total general fund appropriation	\$27,911,272

**SECTION 4. SPECIAL FUNDS TRANSFER.** The less estimated income line item in section 3 of this Act includes the sum of \$4,200,000, or so much of the sum as may be necessary, from the state highway tax distribution fund which may be transferred at the direction of the superintendent of the highway patrol for the

purpose of defraying the expenses of the highway patrol during the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 5. PAYMENTS TO HIGHWAY PATROL OFFICERS.** Each patrol officer of the state highway patrol is entitled to receive from funds appropriated in section 3 of this Act an amount not to exceed one hundred seventy dollars per month for the biennium beginning July 1, 2007, and ending June 30, 2009. The payments are 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. The amounts must be paid at the time and in the same manner as salaries are paid to members of the highway patrol and may be paid without the presentation of receipts or other memorandums.

**SECTION 6. LINE ITEM TRANSFER - EXCEPTION - AUTHORIZATION.** Notwithstanding section 54-16-04, the highway patrol may transfer up to \$100,000 from the field operations line item in section 3 of this Act to the law enforcement training academy line item in section 3 of this Act for the biennium beginning July 1, 2007, and ending June 30, 2009. The highway patrol shall notify the office of management and budget of any transfers made pursuant to this section.

**SECTION 7. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The total general fund appropriation line item in section 3 of this Act includes \$842,000 for the one-time funding items identified in this section. This amount is not a part of the agency's base budget to be used in preparing the 2009-11 executive budget. The highway patrol shall report to the appropriations committees of the sixty-first legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2007, and ending June 30, 2009.

In-car video equipment	\$642,000
Capitol security software	50,000
Automatic external defibrillators	<u>150,000</u>
Total	\$842,000

Approved April 30, 2007  
Filed May 1, 2007



**CHAPTER 12****HOUSE BILL NO. 1012**

(Appropriations Committee)  
(At the request of the Governor)

**DEPARTMENT OF TRANSPORTATION**

AN ACT to provide an appropriation for defraying the expenses of the department of transportation; to provide for legislative council studies; to provide for transfers; to provide a contingent continuation of the single state registration system; to create and enact a new section to chapter 8-11.1 and a new section to chapter 24-02 of the North Dakota Century Code, relating to midwest interstate passenger rail commission dues and authority of the director of the department of transportation to join the multistate highway transportation agreement; to amend and reenact sections 39-04.2-04 and 39-29-10, the new subsection to section 57-40.3-04 of the North Dakota Century Code as created by section 4 of House Bill No. 1393, as approved by the sixtieth legislative assembly, and section 57-40.3-10 of the North Dakota Century Code, relating to distribution of public transportation funds, the operation of off-highway vehicles, motor vehicle excise tax exemptions for tribal members, and motor vehicle excise tax collections; to provide an expiration date; and to declare an emergency.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the department of transportation in section 3 of this Act as follows:

Salaries and wages	\$112,244,313
Operating expenses	143,537,016
Capital assets	656,868,519
Grants	42,358,500
Total special funds - Base level	\$955,008,348

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the department of transportation which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$15,199,882
Operating expenses	31,160,647
Capital assets	(108,147,421)
Grants	10,054,000
Total special funds - Adjustments/enhancements	(\$51,732,892)

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from federal funds and other income, to the department of transportation for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Salaries and wages	\$127,444,195
Operating expenses	174,697,663
Capital improvements	548,721,098
Grants	52,412,500
Total special funds appropriation	\$903,275,456

**SECTION 4. FULL-TIME EQUIVALENT EMPLOYEES.** The department of transportation is authorized to hire additional full-time equivalent positions for highway construction in addition to those authorized by the legislative assembly when it is cost-effective to hire additional positions for construction and maintenance of highways in lieu of entering into contracts for these purposes. The department of transportation shall notify the office of management and budget and report to the legislative council the additional full-time equivalent positions hired.

**SECTION 5. LEGISLATIVE COUNCIL STUDY - TRAFFIC FINES.** The legislative council shall consider studying, during the 2007-08 interim, the traffic fines imposed by state and local governments. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 6. LEGISLATIVE COUNCIL STUDY - HIGHWAY FUNDING AND INFRASTRUCTURE NEEDS.** The legislative council shall study, during the 2007-08 interim, highway funding and transportation infrastructure needs, including those needs resulting from energy and economic development in the state. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 7. Single state insurance registration system.** If the Congress of the United States authorizes a continuation of state participation in the single state insurance registration system for motor carriers, the director of the department of transportation may continue to collect registration fees until the extension authorization expires.

**SECTION 8.** A new section to chapter 8-11.1 of the North Dakota Century Code is created and enacted as follows:

**Amount of dues assessed by commission - Negotiation.** North Dakota's commission members may negotiate a lower amount of any dues imposed by the commission based upon anticipated North Dakota commission-related activities. If the commission does not approve a lower amount of dues, the department of transportation may withhold the dues payment until the next legislative assembly addresses the issue.

**SECTION 9.** A new section to chapter 24-02 of the North Dakota Century Code is created and enacted as follows:

**Multistate highway transportation agreement.** The director may join the multistate highway transportation agreement to promote uniformity among participating jurisdictions in vehicle size and weight standards. The legislative council shall review the guidelines for eligible voting members of the cooperating committee formed by the agreement and appoint a member of the house standing transportation committee and a member of the senate standing transportation committee or their designees as the legislative members representing this state to the cooperating committee formed by the agreement.

**SECTION 10. AMENDMENT.** Section 39-04.2-04 of the North Dakota Century Code is amended and reenacted as follows:

**39-04.2-04. Distribution of funds.**

1. Moneys appropriated by the legislative assembly to the public transportation fund must be disbursed under guidelines issued by the director. The funds must be used by transportation providers to establish and maintain public transportation, especially for the elderly and handicapped, and may be used to contract to provide public transportation, as matching funds to procure money from other sources for public transportation and for other expenditures authorized by the director.
2. ~~Following authorization of the director, the state treasurer shall pay the public transportation funds to transportation providers in each county. Each county shall receive eighteen thousand three hundred dollars a base amount of four-tenths of one percent of the appropriation for the program plus one dollar and fifty cents per capita of population in the county, based upon the latest regular or special official federal census. Each year the director shall increase or decrease the one dollar and fifty cents per capita amount in order to distribute all funds appropriated for the biennium. If there are multiple transportation providers in one county, then the base amount of eighteen thousand three hundred dollars must be divided equally among the providers and the additional per capita amount must be based upon the percentage of elderly and handicapped ridership provided by each transportation provider within the county.~~
3. ~~Unless otherwise provided by law, any moneys remaining in the fund at the end of each biennium must be retained in the public transportation fund for redistribution.~~

**SECTION 11. AMENDMENT.** Section 39-29-10 of the North Dakota Century Code is amended and reenacted as follows:

**39-29-10. Operation by persons under age sixteen.** Except as otherwise provided in this section, ~~a person~~ an individual under sixteen years of age who is not in possession of a valid operator's license or permit to operate an ~~all-terrain off-highway~~ vehicle may not, except upon the lands of the ~~person's~~ individual's parent or guardian or as a participant in an organized sporting event that involves the use of off-highway vehicles, operate an ~~all-terrain off-highway~~ vehicle. ~~A person~~ An individual at least twelve years of age may operate an ~~all-terrain off-highway~~ vehicle if the ~~person~~ individual has completed an ~~all-terrain off-highway~~ vehicle safety training course prescribed by the director of the parks and recreation department ~~and~~, has received the appropriate ~~all-terrain off-highway~~ vehicle safety certificate issued by the director of the department of transportation. The failure of an operator to exhibit an ~~all-terrain off-highway~~ vehicle safety certificate on demand to any official authorized to enforce this chapter is presumptive evidence that that person does not hold ~~such~~ a certificate. Fees collected from each ~~person~~ individual receiving certification must be deposited in the ~~all-terrain off-highway~~ vehicle trail tax fund for ~~all-terrain off-highway~~ vehicle safety education and training programs.

**SECTION 12.** The new subsection to section 57-40.3-04 of the North Dakota Century Code, as created by section 4 of House Bill No. 1393, as approved by the sixtieth legislative assembly, is amended and reenacted as follows:

A motor vehicle acquired at any location within this state by an individual who ~~resides within the boundaries of any reservation in this state and who~~ is an enrolled member of a federally recognized Indian tribe.

**SECTION 13. AMENDMENT.** Section 57-40.3-10 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.3-10. Transfer of revenue.** All moneys collected and received under this chapter after moneys are deposited in the state aid distribution fund under section 57-39.2-26.1 must be transmitted monthly by the director of the department of transportation to the state treasurer to be transferred and credited ~~to the general fund~~ as follows:

1. Ten percent to the highway fund.
2. Ninety percent to the state general fund.

**SECTION 14. TRANSFER.** The director of the department of transportation shall transfer the sum of \$1,000,000 from the highway fund to the public transportation fund for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 15. EXPIRATION DATE.** Section 13 of this Act is effective through June 30, 2009, and after that date is ineffective.

**SECTION 16. EMERGENCY.** Of the funds appropriated in the capital improvements line item in section 3 of this Act, \$25,098,000 relating to fleet services motor vehicle purchases is declared to be an emergency measure.

Approved May 9, 2007  
Filed May 9, 2007

**CHAPTER 13****HOUSE BILL NO. 1013**

(Appropriations Committee)  
(At the request of the Governor)

**COMMISSIONER OF UNIVERSITY AND SCHOOL LANDS**

AN ACT to provide an appropriation for defraying the expenses of the commissioner of university and school lands; and to provide for distribution amounts from permanent funds.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the commissioner of university and school lands in section 3 of this Act as follows:

Salaries and wages	\$2,229,222
Operating expenses	648,700
Capital assets	10,000
Grants	4,888,100
Contingencies	<u>50,000</u>
Total special funds - Base level	\$7,826,022

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the commissioner of university and school lands which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$273,666
Operating expenses	27,000
Grants	<u>1,000,000</u>
Total special funds - Adjustments/enhancements	\$1,300,666

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from the state lands maintenance fund and the oil and gas impact grant fund in the state treasury, to the commissioner of university and school lands for the purpose of defraying the expenses of the commissioner of university and school lands, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Salaries and wages	\$2,502,888
Operating expenses	675,700
Capital assets	10,000
Grants	5,888,100
Contingencies	<u>50,000</u>
Total special funds	\$9,126,688

**SECTION 4. OIL AND GAS IMPACT GRANT FUND.** The amount of \$6,000,000, or so much of the amount as may be necessary, included in the total

special funds appropriated in section 3 of this Act may be spent from the oil and gas impact grant fund by the commissioner of university and school lands for the purpose of providing oil and gas development impact grants and the administration of the oil and gas development impact grant program, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 5. GRANTS.** Section 54-44.1-11 does not apply to appropriations made for oil impact grants in section 3 of this Act.

**SECTION 6. APPROPRIATION LINE ITEM TRANSFERS.** Upon approval of the board of university and school lands, the commissioner of university and school lands may transfer from the contingencies line item in section 3 of this Act to all other line items except the capital assets line item. The commissioner shall notify the office of management and budget of each transfer made pursuant to this section.

**SECTION 7. DISTRIBUTIONS TO STATE INSTITUTIONS.** Notwithstanding section 15-03-05.2, during the biennium beginning July 1, 2007, and ending June 30, 2009, the board of university and school lands shall distribute the following amounts, or so much income as may be available, from the permanent funds managed for the benefit of the following entities:

North Dakota state university	\$1,070,000
University of North Dakota	974,000
Youth correctional center	378,000
School for the deaf	310,000
State college of science	362,000
State hospital	414,000
Veterans' home	238,000
Valley City state university	226,000
North Dakota vision services - school for the blind	200,000
Mayville state university	156,000
Minot state university - Bottineau	24,000
Dickinson state university	24,000
Minot state university	<u>24,000</u>
Total	\$4,400,000

Approved March 23, 2007  
 Filed March 23, 2007

**CHAPTER 14****HOUSE BILL NO. 1014**

(Appropriations Committee)  
(At the request of the Governor)

**INDUSTRIAL COMMISSION**

AN ACT to provide an appropriation for defraying the expenses of the state industrial commission and the agencies under the management of the industrial commission; to authorize transfers; to provide an exemption; to provide for prioritization of carbon sequestration and storage projects; to create and enact a new section to chapter 6-09.17 of the North Dakota Century Code, relating to partnership in assisting community expansion fund incentive limitations; to amend and reenact subsection 6 of section 6-09-15, section 6-09.17-02, and subdivision d of subsection 2 of section 57-39.4-10 of the North Dakota Century Code, relating to the powers of the Bank of North Dakota, the biodiesel partnership in assisting community expansion fund, and sourcing rules for sales and use tax purposes; to provide legislative intent; to provide an appropriation; to provide a contingent appropriation; to provide an appropriation reduction; and to declare an emergency.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the state industrial commission and agencies under its control in section 3 of this Act as follows:

## Subdivision 1.

## INDUSTRIAL COMMISSION

Salaries and wages	\$6,111,034
Operating expenses	1,907,850
Capital assets	45,500
Grants - Lignite research and development	15,200,000
Oil and gas division contingency	225,000
Bond payments	<u>27,292,412</u>
Total all funds - Base level	\$50,781,796
Less estimated income - Base level	43,903,138
Total general fund - Base level	\$6,878,658

## Subdivision 2.

## BANK OF NORTH DAKOTA - OPERATIONS

Salaries and wages	\$18,302,410
Operating expenses	10,925,665
Capital assets	11,272,000
Contingencies	<u>1,700,000</u>
Total from Bank of North Dakota fund - Base level	\$42,200,075

## Subdivision 3.

## BANK OF NORTH DAKOTA - ECONOMIC DEVELOPMENT

Partnership in assisting community expansion fund	\$5,700,000
Agriculture partnership in assisting community expansion fund	1,425,000
Beginning farmer revolving loan fund	950,000

Biodiesel partnership in assisting community expansion fund	<u>1,200,000</u>
Total all funds - Base level	\$9,275,000
Less beginning farmer revolving loan fund - Base level	<u>2,375,000</u>
Total general fund - Base level	\$6,900,000

## Subdivision 4.

## MILL AND ELEVATOR ASSOCIATION

Salaries and wages	\$17,332,391
Operating expenses	14,959,013
Contingencies	300,000
Agriculture promotion	<u>250,000</u>
Total from mill and elevator fund - Base level	\$32,841,404

## Subdivision 5.

## HOUSING FINANCE AGENCY

Salaries and wages	\$4,413,156
Operating expenses	2,805,578
Grants	26,591,280
Housing finance agency contingencies	<u>100,000</u>
Total from housing finance agency fund - Base level	\$33,910,014
Grand total general fund - Section 1	\$13,778,658
Grand total special funds - Section 1	\$155,229,631
Grand total all funds - Section 1	\$169,008,289

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the state industrial commission and agencies under its control which are included in the appropriation in section 3 of this Act as follows:

## Subdivision 1.

## INDUSTRIAL COMMISSION

Salaries and wages	\$1,104,082
Operating expenses	347,840
Capital assets	219,000
Grants - Lignite research and development	4,210,600
Grants - Fossil excavation and restoration fund	250,000
Bond payments	2,182,604
Oil and gas division contingency	<u>60,000</u>
Total all funds - Adjustments/enhancements	\$8,374,126
Less estimated income - Adjustments/enhancements	<u>6,489,994</u>
Total general fund - Adjustments/enhancements	\$1,884,132

## Subdivision 2.

## BANK OF NORTH DAKOTA - OPERATIONS

Salaries and wages	\$1,992,949
Operating expenses	2,371,335
Capital assets	<u>(9,372,000)</u>
Total from Bank of North Dakota fund - Adjustments/enhancements	(\$5,007,716)

## Subdivision 3.

## BANK OF NORTH DAKOTA - ECONOMIC DEVELOPMENT

Partnership in assisting community expansion fund	\$2,300,000
Agriculture partnership in assisting community expansion fund	(25,000)
Biodiesel partnership in assisting community expansion fund	(1,200,000)
Biofuels partnership in assisting community expansion fund	<u>4,200,000</u>



Total all funds - Adjustments/enhancements	\$5,275,000
Less beginning farmer revolving loan fund - Adjustments/enhancements	<u>(1,425,000)</u>
Total general fund - Adjustments/enhancements	\$6,700,000

## Subdivision 4.

## MILL AND ELEVATOR ASSOCIATION

Salaries and wages	\$2,735,874
Operating expenses	1,303,559
Agriculture promotion	<u>(100,000)</u>
Total from mill and elevator fund - Adjustments/enhancements	\$3,939,433

## Subdivision 5.

## HOUSING FINANCE AGENCY

Salaries and wages	\$288,368
Operating expenses	6,607,200
Grants	<u>728,520</u>
Total from housing finance agency fund - Adjustments/enhancements	\$7,624,088
Grand total general fund - Section 2	\$8,869,132
Grand total special funds - Section 2	\$11,620,799
Grand total all funds - Section 2	\$20,489,931

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state industrial commission and agencies under its control for the purpose of defraying the expenses of their various divisions, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

## Subdivision 1.

## INDUSTRIAL COMMISSION

Salaries and wages	\$7,215,116
Operating expenses	2,255,690
Capital assets	264,500
Grants - Lignite research and development	19,410,600
Grants - Fossil excavation and restoration fund	250,000
Grants - Bond payments	29,475,016
Oil and gas division contingency	<u>285,000</u>
Total all funds	\$59,155,922
Less estimated income	<u>50,393,132</u>
Total general fund appropriation	\$8,762,790

## Subdivision 2.

## BANK OF NORTH DAKOTA - OPERATIONS

Salaries and wages	\$20,295,359
Operating expenses	13,297,000
Capital assets	1,900,000
Contingencies	<u>1,700,000</u>
Total appropriation from Bank of North Dakota fund	\$37,192,359

## Subdivision 3.

## BANK OF NORTH DAKOTA - ECONOMIC DEVELOPMENT

Partnership in assisting community expansion fund	\$8,000,000
Agriculture partnership in assisting community expansion fund	1,400,000
Beginning farmer revolving loan fund	950,000
Biofuels partnership in assisting community expansion fund	<u>4,200,000</u>
Total all funds	\$14,550,000
Less beginning farmer revolving loan fund	<u>950,000</u>
Total general fund	\$13,600,000

## Subdivision 4.

## MILL AND ELEVATOR ASSOCIATION

Salaries and wages	\$20,068,265
Operating expenses	16,262,572
Contingencies	300,000
Agriculture promotion	<u>150,000</u>
Total appropriation from mill and elevator fund	\$36,780,837

## Subdivision 5.

## HOUSING FINANCE AGENCY

Salaries and wages	\$4,701,524
Operating expenses	9,412,778
Grants	27,319,800
Housing finance agency contingencies	<u>100,000</u>
Total appropriation from housing finance agency fund	\$41,534,102
Total general fund appropriation - H.B. 1014	\$22,144,184
Total special funds appropriation - H.B. 1014	\$171,667,931
Total all funds appropriation - H.B. 1014	\$193,812,115

**SECTION 4. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The total general fund appropriation line item in section 3 of this Act includes \$4,680,000 for the one-time funding items identified in this section. This amount is not a part of the agency's base budget to be used in preparing the 2009-11 executive budget. The industrial commission shall report to the appropriations committees of the sixty-first legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2007, and ending June 30, 2009.

Biofuels PACE	\$4,200,000
Fossil restoration fund	250,000
Core and sample library repairs	<u>230,000</u>
Total	\$4,680,000

**SECTION 5. APPROPRIATION.** In addition to the amount appropriated to the housing finance agency in subdivision 5 of section 3 of this Act, there is appropriated any additional income or unanticipated income from federal or other funds which may become available to the agency for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 6. APPROPRIATION - EMERGENCY COMMISSION APPROVAL.** In addition to the amount appropriated to the state industrial commission in subdivision 1 of section 3 of this Act, there is appropriated, with the approval of the emergency commission, funds that may become available to the commission from bonds authorized by law to be issued by the state industrial

commission under chapters 4-36 and 54-17.2 and section 54-17-25, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 7. APPROPRIATION - OFFICE OF MANAGEMENT AND BUDGET.** There is appropriated out of any moneys in the permanent oil tax trust fund, not otherwise appropriated, the sum of \$5,300,000, or so much of the sum as may be necessary, to the office of management and budget for the purpose of repaying the Bank of North Dakota for loans and accrued interest relating to funds borrowed during the 2005-07 biennium for centers of excellence, for the period beginning with the effective date of this Act and ending June 30, 2009.

**SECTION 8. EXEMPTION.** The amount appropriated to the Bank of North Dakota in the capital assets line item in sections 3 and 6 of 2005 Senate Bill No. 2014 is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available for construction of a new building during the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 9. TRANSFER.** The sum of \$80,195, or so much of the sum as may be necessary, included in the special funds appropriation line item in subdivision 1 of section 3 of this Act, is from the North Dakota mill and elevator association. The moneys must be transferred during the biennium beginning July 1, 2007, and ending June 30, 2009, upon order of the state industrial commission.

**SECTION 10. TRANSFER.** The sum of \$102,066, or so much of the sum as may be necessary, included in the special funds appropriation line item in subdivision 1 of section 3 of this Act, is from the accumulated and undivided profits of the Bank of North Dakota. The moneys must be transferred during the biennium beginning July 1, 2007, and ending June 30, 2009, upon order of the state industrial commission.

**SECTION 11. TRANSFER.** The sum of \$69,259, or so much of the sum as may be necessary, included in the special funds appropriation line item in subdivision 1 of section 3 of this Act, is from the housing finance agency fund. The moneys must be transferred during the biennium beginning July 1, 2007, and ending June 30, 2009, upon order of the state industrial commission.

**SECTION 12. TRANSFER.** The sum of \$21,872, or so much of the sum as may be necessary, included in the special funds appropriation line item in subdivision 1 of section 3 of this Act, is from the revenues of the public finance authority. The available moneys must be transferred during the biennium beginning July 1, 2007, and ending June 30, 2009, upon order of the state industrial commission.

**SECTION 13. LANDS AND MINERALS TRUST FUND TRANSFER TO THE GENERAL FUND.** During the biennium beginning July 1, 2007, and ending June 30, 2009, the director of the office of management and budget may transfer special funds from the lands and minerals trust fund to the general fund in the amount of \$15,000,000.

**SECTION 14. BANK OF NORTH DAKOTA TRANSFERS TO STATE GENERAL FUND.** During the biennium beginning July 1, 2007, and ending June 30, 2009, the industrial commission shall transfer to the state general fund \$60,000,000 from the current earnings and the accumulated undivided profits of the Bank of North Dakota. The moneys must be transferred in the amounts and at the times requested by the director of the office of management and budget. A transfer

authorized may be made only to the extent the transfer does not reduce the Bank's capital structure below \$175,000,000.

**SECTION 15. STUDENT LOAN TRUST FUND TRANSFER TO THE GENERAL FUND.** The industrial commission shall transfer to the general fund in the state treasury the sum of \$3,100,000 of earnings from the North Dakota student loan trust fund. The moneys must be transferred in the amounts and at the times requested by the director of the office of management and budget during the biennium beginning July 1, 2007, and ending June 30, 2009, and upon certification by the student loan trust trustee that sufficient moneys remain available to pay all debt service on student loan trust bonds, all required rebate payments to the United States treasury, and all program operating expenses.

**SECTION 16. TRANSFER.** The state industrial commission shall transfer to the general fund in the state treasury the sum of \$5,000,000 from the North Dakota mill and elevator association. The moneys must be transferred in amounts and at such times as requested by the director of the office of management and budget during the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 17. INCOME AUTHORIZATION - STUDENT LOAN TRUST.** There is authorized the receipt of fees by the state industrial commission in the sum of \$91,131, or so much of the sum as is owed, included in the special funds appropriation line item in subdivision 1 of section 3 of this Act, from the student loan trust for administrative services rendered by the state industrial commission to the extent permitted by sections 54-17-24 and 54-17-25. The fees must be received during the biennium beginning July 1, 2007, and ending June 30, 2009, upon order of the state industrial commission.

**SECTION 18. LIGNITE RESEARCH, DEVELOPMENT, AND MARKETING PROGRAM - APPROPRIATION - LIGNITE MARKETING FEASIBILITY STUDY.** The amount of \$1,500,000, or so much of the amount as may be necessary, included in the grants and special funds appropriation line item in subdivision 1 of section 3 of this Act, is appropriated from the lignite research fund for the purpose of contracting for an independent, nonmatching lignite marketing feasibility study or studies that determine those focused priority areas where near-term, market-driven projects, activities, or processes will generate matching private industry investment and have the most potential of preserving existing lignite production and industry jobs or that will lead to increased development of lignite and its products and create new lignite industry jobs and economic growth for the general welfare of this state. Moneys appropriated pursuant to this section may also be used for the purpose of contracting for nonmatching studies and activities in support of the lignite vision 21 program; for litigation that may be necessary to protect and promote the continued development of lignite resources; for nonmatching externality studies and activities in externality proceedings; or other marketing, environmental, or transmission activities that assist with marketing of lignite-based electricity and lignite-based byproducts. Moneys not needed for the purposes stated in this section are available to the commission for funding projects, processes, or activities under the lignite research, development, and marketing program.

**SECTION 19. LEGISLATIVE INTENT - BANK PROPERTY.** It is the intent of the sixtieth legislative assembly that real estate property owned by the Bank of North Dakota at 1205-1215 west main street in Bismarck not be sold by the Bank of North Dakota during the 2007-09 biennium.

**SECTION 20. LEGISLATIVE INTENT - BOND PAYMENTS.** The amount of \$29,475,016 included in subdivision 1 of section 3 of this Act in the grants - bond

payments line item must be paid from the following funding sources during the biennium beginning July 1, 2007, and ending June 30, 2009:

North Dakota university system	\$15,822,002
North Dakota university system - Energy conservation projects	1,491,242
Department of corrections - State penitentiary	3,090,022
Department of corrections - Energy conservation projects	17,958
State department of health	692,242
Job service North Dakota	743,905
Department of human services - Southeast human service center	56,431
Department of human services - State hospital	466,391
Department of human services - Developmental center at Grafton	534,505
Adjutant general	70,667
Veterans' home improvement fund	256,114
Information technology department - ConnectND	5,407,075
Office of management and budget	158,519
Office of the attorney general	182,485
State historical society	331,762
Parks and recreation	17,544
Research and extension service	<u>136,152</u>
Total	\$29,475,016

**SECTION 21. APPROPRIATION - TRANSFER.** The funds appropriated in subdivision 3 of section 3 of this Act must be transferred by the Bank of North Dakota to the partnership in assisting community expansion fund; the agriculture partnership in assisting community expansion fund; and the biofuels partnership in assisting community expansion fund. The Bank of North Dakota may not be construed to be a general fund agency because of the appropriation made by subdivision 3 of section 3 of this Act.

**SECTION 22. TRANSFER AUTHORITY.** Notwithstanding any other provision of law, the Bank of North Dakota may transfer any unobligated funds between funds that have been appropriated by the legislative assembly for partnership in assisting community expansion fund and the biofuels partnership in assisting community expansion fund.

<sup>6</sup> **SECTION 23. AMENDMENT.** Subsection 6 of section 6-09-15 of the North Dakota Century Code is amended and reenacted as follows:

6. Lease, assign, sell, exchange, transfer, convey, grant, pledge, or mortgage all real and personal property, title to which has been acquired in any manner.

<sup>7</sup> **SECTION 24. AMENDMENT.** Section 6-09.17-02 of the North Dakota Century Code is amended and reenacted as follows:

<sup>6</sup> Section 6-09-15 was also amended by section 1 of House Bill No. 1088, chapter 87, section 4 of Senate Bill No. 2214, chapter 293, and section 5 of Senate Bill No. 2214, chapter 293.

<sup>7</sup> Section 6-09.17-02 was also amended by section 3 of Senate Bill No. 2180, chapter 98.

**6-09.17-02. Biodiesel partnership in assisting community expansion fund - Continuing appropriation - Administration.** A biodiesel partnership in assisting community expansion fund is ~~hereby~~ established. All moneys transferred into the fund, interest on fund moneys, and payments to the fund are ~~hereby~~ appropriated for the purposes of this chapter. This fund is not subject to section 54-44.1-11 and any unexpended and unobligated balance in the fund at the end of the biennium must be transferred to the ~~state general fund~~ biofuels partnership in assisting community expansion fund. The Bank of North Dakota shall administer the fund.

**SECTION 25.** A new section to chapter 6-09.17 of the North Dakota Century Code is created and enacted as follows:

**Partnership in assisting community expansion fund incentive limitation.**

A biodiesel production facility or ethanol production facility that receives interest buydown from the biofuels partnership in assisting community expansion fund is not eligible to receive interest buydown from the partnership in assisting community expansion fund for the same project during the same biennium.

<sup>8</sup> **SECTION 26. AMENDMENT.** Subdivision d of subsection 2 of section 57-39.4-10 of the North Dakota Century Code as amended by Senate Bill No. 2380, as approved by the sixtieth legislative assembly, is amended and reenacted as follows:

- d. Until December 31, ~~2007~~ 2009, florist sales as defined by each member state. Prior to this date, these items must be sourced according to the requirements of each member state.

**SECTION 27. Carbon sequestration and storage projects - Priority.**

Notwithstanding any other provision of law, the industrial commission, department of mineral resources, public service commission, or any other state entity that approves a carbon sequestration or storage project shall give priority to an operation located in this state for the expected life of the operation.

**SECTION 28. CONTINGENT OIL AND GAS DIVISION FUNDING - EMERGENCY COMMISSION APPROVAL.** The funds appropriated in the oil and gas division contingency line item in subdivision 1 of section 3 of this Act are from the land and minerals trust fund. If funds are required due to the average drilling rig count exceeding forty-five active rigs for each month in any consecutive three-month period, the oil and gas division may spend moneys from this line item upon emergency commission approval. The oil and gas division may hire up to two full-time equivalent positions with the contingency funds.

**SECTION 29. APPROPRIATION - STATE CONTINGENCY FUND.** In addition to the amount appropriated to the office of management and budget in House Bill No. 1522, there is appropriated from the general fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much of the sum as may be necessary, to the office of management and budget for state contingencies for the biennium beginning July 1, 2007, and ending June 30, 2009.

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<sup>8</sup> Section 57-39.4-10 was also amended by section 12 of Senate Bill No. 2380, chapter 528.

**SECTION 30. APPROPRIATIONS REDUCTIONS.** The amounts listed reduce the general fund and special funds appropriation authority enacted by the sixtieth legislative assembly of the state of North Dakota for the various agencies and institutions for the biennium beginning July 1, 2007, and ending June 30, 2009:

AGENCY OR INSTITUTION	GENERAL FUND REDUCTION	SPECIAL FUNDS REDUCTION	TOTAL REDUCTION
Governor's office	\$2,694		\$2,694
Secretary of state	2,522	\$108	2,630
Office of management and budget	5,133	1,245	6,378
Information technology department	2,743	40,947	43,690
State auditor	5,291	2,333	7,624
State treasurer	722		722
Attorney general	18,953	3,853	22,806
Tax commissioner	14,845		14,845
Office of administrative hearings		1,228	1,228
Legislative council	5,288		5,288
Judicial branch	52,634	1,394	54,028
Commission on legal council for indigents	2,820		2,820
Retirement and investment office		2,396	2,396
Public employees retirement		3,562	3,562
Department of public instruction	3,451	8,069	11,520
Land department		2,564	2,564
State library	2,199	347	2,546
School for the deaf	2,824	144	2,968
North Dakota vision services - School for the blind	864	260	1,124
Department of career and technical education	1,057	83	1,140
Department of health	11,930	26,844	38,774
Veterans' home	2,212	5,194	7,406
Indian affairs commission	496		496
Department of veterans affairs	576		576
Department of human services	132,310	77,339	209,649
Protection and advocacy project	623	2,549	3,172
Job service North Dakota	125	27,920	28,045
Insurance commissioner		5,855	5,855
Industrial commission	6,786	786	7,572
Labor commissioner	893	357	1,250
Public service commission	3,981	2,073	6,054
Aeronautics commission		808	808
Department of financial institutions		4,438	4,438
Securities department	1,278		1,278
Bank of North Dakota		20,492	20,492
Housing finance agency		4,812	4,812
Mill and elevator association		15,228	15,228
Workforce safety and insurance		32,577	32,577
Highway patrol	15,949	8,215	24,164
Department of corrections and rehabilitation	65,693	3,843	69,536
Adjutant general	9,033	18,719	27,752
Department of commerce	7,579	2,777	10,356
Agriculture commissioner	4,129	3,645	7,774
State seed department		3,284	3,284
Upper great plains transportation institute	115	955	1,070
Branch research centers	2,576	920	3,496
North Dakota state university extension service	2,518	1,902	4,420
Northern crops institute	80	62	142
Main research center	4,167	1,933	6,100
Agronomy seed farm		184	184
Racing commission	48	226	274
State historical society	5,576	696	6,272
Council on the arts	508		508
Game and fish department		20,072	20,072
Parks and recreation department	5,126	272	5,398
State water commission	10,259	1,033	11,292
Department of transportation		117,956	117,956
Total	\$418,606	\$482,499	\$901,105

**SECTION 31. EMERGENCY.** The appropriation in subdivision 3 of section 3 of this Act for the partnership in assisting community expansion fund; the appropriation in section 7 of this Act for the office of management and budget; the transfer in section 21 of this Act for the partnership in assisting community expansion fund; the transfer in section 22 of this Act between the partnership in assisting community expansion fund and the biofuels partnership in assisting community expansion fund; and section 23 of this Act are declared to be emergency measures.

Approved April 30, 2007

Filed May 1, 2007



**CHAPTER 15****HOUSE BILL NO. 1015**

(Appropriations Committee)  
(At the request of the Governor)

**DEPARTMENT OF CORRECTIONS AND  
REHABILITATION**

AN ACT to provide an appropriation for defraying the expenses of the department of corrections and rehabilitation; to amend and reenact subsection 1 of section 12-65-08, subsection 2 of section 12.1-32-07, and section 19-03.1-45 of the North Dakota Century Code, relating to fees for the interstate transfer or travel of probationers, supervision fees, and drug treatment; to provide an exemption; to provide legislative intent; to provide for budget section approval; to provide for a transfer; to provide an appropriation; to provide for a correctional facility review committee; to provide for a report to the budget section; and to provide for a legislative council study.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the department of corrections and rehabilitation in section 3 of this Act as follows:

Field services	\$27,075,150
Prisons division	79,551,714
Juvenile community services	7,930,658
Youth correctional center	12,843,309
Equity pool	1,500,000
Total all funds - Base level	\$128,900,831
Less estimated income - Base level	27,765,147
Total general fund - Base level	\$101,135,684

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the department of corrections and rehabilitation which are included in the appropriation in section 3 of this Act as follows:

Field services	(\$27,075,150)
Prisons division	(79,551,714)
Juvenile community services	(7,930,658)
Youth correctional center	(12,843,309)
Adult services	131,143,936
Youth services	23,450,865
Equity pool	(1,500,000)
Total all funds - Adjustments/enhancements	\$25,693,970
Less estimated income - Adjustments/enhancements	(3,835,654)
Total general fund - Adjustments/enhancements	\$29,529,624

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the

general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of corrections and rehabilitation for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Adult services	\$131,143,936
Youth services	23,450,865
Total all funds	\$154,594,801
Less estimated income	23,929,493
Total general fund appropriation	\$130,665,308

**SECTION 4. AMENDMENT.** Subsection 1 of section 12-65-08 of the North Dakota Century Code is amended and reenacted as follows:

1. Upon the approval by the department of corrections and rehabilitation of a request of a probationer who is under the supervision of the department of corrections and rehabilitation to transfer residence to another state under the interstate compact for adult offender supervision, the probationer shall pay to the department an application fee of one hundred fifty dollars. The department may waive the offender's application fee. If the department waives the offender's payment of the fee, the department shall pay the offender's application fee. In addition to the application fee paid by the probationer or the department, the county having jurisdiction over the probationer, upon approval of the application for transfer, shall pay to the department a fee of one hundred fifty dollars. However, if the balance in the fund created pursuant to subsection 3 exceeds seventy-five thousand dollars on June thirtieth of the immediately preceding fiscal year, the department shall waive the entire fee otherwise required to be paid by the county.

<sup>9</sup> **SECTION 5. AMENDMENT.** Subsection 2 of section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

2. The conditions of probation must be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life or to assist the defendant to do so. The court shall provide as an explicit condition of every probation that the defendant not commit another offense during the period for which the probation remains subject to revocation. The court shall order supervision costs and fees of not less than ~~forty~~ forty-five dollars per month unless the court makes a specific finding on record that the imposition of fees will result in an undue hardship. If the offender has not paid the full amount of supervision fees and costs before completion or termination of probation, the court may issue an order, after opportunity for hearing, to determine the amount of supervision fees and costs that are unpaid. The order may be filed, transcribed, and enforced by the department of corrections and rehabilitation in the same manner as civil judgments rendered by a district court of this state.

<sup>9</sup> Section 12.1-32-07 was also amended by section 3 of House Bill No. 1122, chapter 119, and section 1 of Senate Bill No. 2241, chapter 135.

**SECTION 6. AMENDMENT.** Section 19-03.1-45 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.1-45. ~~Mandatory drug~~ Drug abuse assessment and treatment - Presentence investigation - Certified drug abuse treatment programs.**

1. ~~When~~ If a person located in Walsh, Pembina, or Grand Forks Counties has pled guilty or has been found guilty of a felony violation of subsection 6 of section 19-03.1-23 ~~and, if that person has not previously pled guilty or been found guilty of any offense involving the use, possession, manufacture, or delivery of a controlled substance or of any other felony offense of this or another state or the federal government, and if the court imposes probation,~~ the court shall impose a period of probation of not less than eighteen months in conjunction with a suspended execution of a sentence of imprisonment, a sentence to probation, or an order deferring imposition of sentence.
2. Upon a plea or finding of guilt of a person subject to the provisions of subsection 1, the court shall order a presentence investigation to be conducted by the department. The presentence investigation shall include a drug and alcohol evaluation conducted by a licensed addiction counselor.
3. If the licensed addiction counselor recommends treatment, the court shall require the person to participate in an addiction program licensed by the department of human services as a condition of the probation. The court shall commit the person to treatment through a licensed addiction program until determined suitable for discharge by the court. The term of treatment shall not exceed eighteen months and may include an aftercare plan. During the commitment and while subject to probation, the person shall be supervised by the department.
4. If the person fails to participate in, or has a pattern of intentional conduct that demonstrates the person's refusal to comply with or participate in the treatment program, as established by judicial finding, the person shall be subject to revocation of the probation. Notwithstanding subsection 2 of section 12.1-32-02, the amount of time participating in the treatment program under this section is not "time spent in custody" and will not be a credit against any sentence to term of imprisonment.
5. ~~The cost for all drug abuse assessments and certified drug abuse treatment programs shall be initially paid by the department. The court shall order the person to reimburse the department for the assessment and treatment expenses in accordance with the procedures of section 12.1-32-08. The department shall handle the collection of costs from the offenders in the same manner as it collects court costs, fees, and supervision fees.~~
6. In this section:
  - a. "Department" means the department of corrections and rehabilitation; and
  - b. "Licensed addiction counselor" is a person licensed pursuant to section 43-45-05.1.

7. The provisions of this section shall be implemented as a pilot project in Pembina, Walsh, and Grand Forks Counties effective three months from the date of receipt of a federal grant for methamphetamine treatment being applied for by the department of human services. The department shall collaborate management of the pilot project with the department of human services to ensure services under the federal grant program for one-half of the offenders mandated by the court to submit to mandatory treatment, not to exceed twenty-three individuals. The department shall hire a program manager to manage the pilot project, collect statistics regarding the operation of the program, track participants in the program, and provide a report to the attorney general, the legislative council for distribution during the November 2006 legislative council meeting, and the sixtieth legislative assembly detailing the number of participants in the program, the cost of the program, relapse statistics, and other data concerning the effectiveness of the program.

**SECTION 7. NORTH CENTRAL CORRECTIONAL AND REHABILITATION CENTER.** The department of corrections and rehabilitation shall distribute in twenty-four equal payments \$1,631,044 from the general fund included in the prisons division line item in section 3 of this Act for treatment services at the north central correctional and rehabilitation center for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 8. TRANSFER TO THE STATE PENITENTIARY LAND FUND - CONTINGENT APPROPRIATION.** The director of the office of management and budget shall transfer on July 1, 2007, \$41,000,000 from the general fund to the state penitentiary land fund established in North Dakota Century Code section 54-23.3-04 to be used for correctional facilities. The funds are appropriated to the department of corrections and rehabilitation for a project authorized and approved under section 10 of this Act and are available for construction, for the biennium beginning July 1, 2007, and ending June 30, 2009. All income earned on the fund must be deposited in the state penitentiary land fund.

**SECTION 9. APPROPRIATION - LEGISLATIVE COUNCIL.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$250,000, or so much of the sum as may be necessary, to the legislative council for prison facility alternative concepts and preliminary design development, as provided for in section 10 of this Act for the period beginning with the effective date of this Act and ending June 30, 2009.

**SECTION 10. CORRECTIONAL FACILITY REVIEW COMMITTEE - MEMBERSHIP - DUTIES - RECOMMENDATIONS.**

1. During the 2007-08 interim, the legislative council shall appoint a correctional facility review committee to address the immediate and future needs of the state penitentiary. The membership of the committee must include six members of the legislative assembly selected by the legislative council. The membership of the committee must include:
  - a. Three members of the house of representatives, two of whom must represent the majority faction of the house of representatives and one of whom must represent the minority faction of the house of representatives; and

- b. Three members of the senate, two of whom must represent the majority faction of the senate and one of whom must represent the minority faction of the senate.
2. The legislative council chairman shall designate the committee chairman and vice chairman.
3. The committee shall operate according to the statutes and procedures governing the operation of other legislative council interim committees.
4. The committee shall engage consultant and architectural services, subject to legislative council approval, for the development of the following three correctional facility concepts:
  - a. The construction of a new correctional facility on the existing state penitentiary site;
  - b. The construction of a new correctional facility at a site other than the state penitentiary site; and
  - c. The remodeling of the existing state penitentiary facility.
5. Each of the three correctional facility concepts developed by the consultant and architect must:
  - a. Include a master plan, staffing plan, a cost-benefit analysis, and project cost estimate;
  - b. Be based upon housing a population of approximately nine hundred to one thousand inmates;
  - c. Include options for expansion;
  - d. Take into consideration the transfer of the inmates at the Missouri River correctional center to the new or remodeled facility; and
  - e. Take into consideration the facility and staffing needs of the James River correctional center.
6. In developing the concepts, the committee shall seek the input of the department of corrections and rehabilitation.
7. Before June 1, 2008, the committee shall forward the three concepts along with a recommendation for one of the three concepts to the emergency commission for the commission's consideration and authorization.
8. If the emergency commission authorizes one of the three concepts, the emergency commission shall forward the authorized concept to the budget section of the legislative council. The budget section may approve or reject the concept as authorized by the emergency commission.

**SECTION 11. EXEMPTION.** The amount appropriated to the department of corrections and rehabilitation in section 5 of 2005 Senate Bill No. 2341 is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this

appropriation are available for crime victims compensation during the period beginning with passage of this Act and ending June 30, 2009.

**SECTION 12. INMATE MEDICAL SYSTEM - BUDGET SECTION APPROVAL.** The department of corrections and rehabilitation shall, during the 2007-08 interim, develop a plan for and implement an inmate medical system. The department shall provide reports to the legislative information technology committee as required by chapters 54-35 and 54-59 of the North Dakota Century Code and information technology department standards. At the completion of the planning phase and prior to the implementation stage, the department shall provide an update to the information technology committee and the budget section in the form of a project startup report identifying benefits to be achieved, estimated costs for implementation, a milestone schedule, and project risks. Budget section approval is required before the department of corrections and rehabilitation proceeds with implementation.

**SECTION 13. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The total general fund appropriation line item in section 3 of this Act includes \$3,559,391 for the one-time funding items identified in this section. This amount is not a part of the agency's base budget to be used in preparing the 2009-11 executive budget. The department of corrections and rehabilitation shall report to the appropriations committees of the sixty-first legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2007, and ending June 30, 2009.

Youth correctional center security lighting	\$70,000
Deferred maintenance	1,725,391
Medical information system, equipment, and radios	1,764,000
Total	\$3,559,391

**SECTION 14. INTENT - REPORTING LEVELS.** The office of management and budget shall change the reporting levels on the budget analysis and reporting system to allow for a separation of food and clothing items for the 2009-11 biennium.

**SECTION 15. INTENT - TEMPORARY SALARIES - FIELD SERVICES.** It is the intent of the sixtieth legislative assembly that the department of corrections and rehabilitation may use \$250,000 of its 2007-09 biennium appropriation for temporary salaries for the field services division for supervision of offenders.

**SECTION 16. LEGISLATIVE COUNCIL STUDY - RETIREMENT CRITERIA FOR STATE CORRECTIONAL OFFICERS AND PEACE OFFICERS.** The legislative council shall consider studying, during the 2007-08 interim, retirement program criteria and benefits for correctional officers and peace officers employed by state agencies, including the feasibility and desirability of allowing these employees to retire with full retirement benefits at age fifty-five or the "rule of 85". The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 17. SPACE, OPERATIONAL, AND STAFFING PLAN - BUDGET SECTION REPORT.** The department of corrections and rehabilitation shall prepare a space, operational, and staffing plan for the state penitentiary and James River correctional center. The plan must be based on the state penitentiary building project authorized by the sixtieth legislative assembly and the current facilities at the James River correctional center and the Missouri River correctional center. The plan must be presented at the first budget section meeting after March 1, 2008.

**SECTION 18. LEGISLATIVE INTENT - CORRECTIONAL FACILITIES.** It is the intent of the sixtieth legislative assembly that the correctional facility concepts to be developed pursuant to this Act not include any consideration of closure of the James River correctional center or the Dakota women's correctional and rehabilitation center in New England.

Approved May 2, 2007  
Filed May 3, 2007

**CHAPTER 16****HOUSE BILL NO. 1016**(Appropriations Committee)  
(At the request of the Governor)**JOB SERVICE NORTH DAKOTA**

AN ACT to provide an appropriation for defraying the expenses of job service North Dakota; and to amend and reenact section 52-02.1-02 of the North Dakota Century Code, relating to job service North Dakota program services.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to job service North Dakota in section 3 of this Act as follows:

Salaries and wages	\$34,960,037
Operating expenses	13,278,913
Capital assets	225,000
Grants	9,047,165
Workforce 20/20	1,480,231
Reed Act - Work first	254,925
Reed Act - Unemployment insurance computer modernization	525,000
Total all funds - Base level	\$59,771,271
Less estimated income - Base level	58,270,259
Total general fund - Base level	\$1,501,012

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for job service North Dakota which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	(\$1,931,562)
Operating expenses	(126,432)
Capital assets	(205,000)
Grants	(608,945)
Workforce 20/20	19,769
Reed Act - Work first	(254,925)
Reed Act - Unemployment insurance computer modernization	6,775,000
Total all funds - Adjustments/enhancements	\$3,667,905
Less estimated income - Adjustments/enhancements	3,421,832
Total general fund - Adjustments/enhancements	\$246,073

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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 job service North Dakota, for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Salaries and wages	\$33,028,475
Operating expenses	13,152,481



Capital assets	20,000
Grants	8,438,220
Workforce 20/20	1,500,000
Reed Act - Unemployment insurance computer modernization	<u>7,300,000</u>
Total all funds	\$63,439,176
Less estimated income	<u>61,692,091</u>
Total general fund appropriation	\$1,747,085

**SECTION 4. APPROPRIATION - REED ACT FUNDS - UNEMPLOYMENT INSURANCE COMPUTER MODERNIZATION.** The special appropriation of \$7,300,000 in section 3 of this Act is from federal Reed Act funds made available to the state by the federal Reed Act distributions made in federal fiscal years 1957, 1958, 1999, and 2002, pursuant to section 903 of the Social Security Act. This sum, or so much of the sum as may be necessary, is for the purpose of developing a modernized unemployment insurance computer system, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 5. APPROPRIATION.** All federal funds received by job service North Dakota in excess of those funds appropriated in section 3 of this Act are appropriated, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 6. WORKFORCE 20/20 FUNDING.** Fifty percent of the workforce 20/20 funding in section 3 of this Act must be used for projects for new or expanding businesses in North Dakota.

**SECTION 7. AMENDMENT.** Section 52-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**52-02.1-02. Job service North Dakota - Agreements.** Program services developed and coordinated by job service North Dakota must be provided to primary sector businesses found eligible for loans or grants under this chapter. Job service North Dakota may enter into an agreement to establish a project with an employer which meets the following conditions:

1. Sets a date of commencement of the project.
2. Identifies program costs, including deferred costs, which are to be paid from available sources including new jobs credit from withholding to be received or derived from new jobs resulting from the project.
3. Provides for a guarantee by the employer of payment for program costs.
4. Provides that any deferral of program cost payments may not exceed ten years from the date of commencement of the project.
5. Provides that on-the-job training costs for employees may not exceed fifty percent of the annual gross payroll costs of the new jobs in the first full year after the date of commencement of the project. For purposes of this subsection, "gross payroll" is the gross wages and salaries for the new jobs.
6. Provides the maximum amount of new jobs credit from withholding or tuition and fee payments allowed for a project.
7. Provides that every employee participating in the new jobs training program must be paid an income of at least ~~seven~~ ten dollars ~~and fifty~~

cents per hour, plus benefits, by the end of the first year of employment under the project and for the remaining life of the loan.

A project requiring a loan from the department or a community may not be approved, and an agreement may not be executed by job service North Dakota, until notification from the department or community that the employer has qualified for a loan. Upon execution of the agreement, job service North Dakota shall notify the state tax commissioner of the agreement and the identity of the employer. Job service North Dakota may adopt rules to implement this chapter. Job service North Dakota shall prepare an annual report for the governor and the legislative assembly with respect to the new jobs training program.

Approved April 30, 2007

Filed May 1, 2007

**CHAPTER 17****HOUSE BILL NO. 1017**

(Appropriations Committee)  
(At the request of the Governor)

**OFFICE OF ADMINISTRATIVE HEARINGS**

AN ACT to provide an appropriation for defraying the expenses of the office of administrative hearings.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the office of administrative hearings in section 3 of this Act as follows:

Salaries and wages	\$1,042,927
Operating expenses	266,917
Total special funds appropriation - Base level	\$1,309,844

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the office of administrative hearings which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$226,747
Operating expenses	107,500
Total special funds appropriation - Adjustments/enhancements	\$334,247

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from income to the office of administrative hearings for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Salaries and wages	\$1,269,674
Operating expenses	374,417
Total special funds appropriation	\$1,644,091

Approved May 1, 2007  
Filed May 2, 2007

**CHAPTER 18**

**HOUSE BILL NO. 1018**

(Appropriations Committee)  
(At the request of the Governor)

**DEPARTMENT OF COMMERCE**

AN ACT to provide an appropriation for defraying the expenses of the department of commerce; to provide an appropriation to the department of career and technical education; to provide an appropriation to the office of management and budget; to authorize the office of management and budget to borrow funds from the Bank of North Dakota; to provide for a contingent loan from the Bank of North Dakota; to provide a contingent appropriation to the secretary of state; to provide a continuing appropriation; to provide for reports to the sixty-first legislative assembly; to provide for reports to the legislative council; to provide for legislative council studies; to provide exemptions; to create and enact a new section to chapter 15-20.1, four new sections to chapter 54-60, a new section to chapter 55-10, a new section to chapter 57-38, a new subdivision to subsection 1 of section 57-38-01.2, and sections 57-38-01.24 and 57-38-01.25 of the North Dakota Century Code, relating to a program to provide grants for innovation, department of commerce division of workforce development programs and duties, naming the missile silo historic site, angel fund investments, tax credits for internships, tax exemptions for workforce recruitment, tax credits for research and experimental expenditures, and to create a beginning again North Dakota pilot program; to amend and reenact sections 15-69-02, 15-69-03, 15-69-04, and 15-69-05, subsections 4 and 6 of section 54-17-07.3, sections 54-60-02 and 54-60-09, subdivision 1 of subsection 2 of section 54-60.1-01, the new section to chapter 57-06 as created by section 2 of House Bill No. 1072, and as amended by section 2 of House Bill No. 1317, as approved by the sixtieth legislative assembly, and sections 57-38-30.3, 57-38-30.5, 57-38.5-05, and 57-38.6-01 of the North Dakota Century Code and section 17 of chapter 151 of the 2005 Session Laws, relating to the centers of excellence program, housing finance agency programs, updating department of commerce law, department of commerce division of workforce development duties, the definition of business incentive, tax forms, wind energy taxable valuation, tax credits for workforce recruitment, research and experimental expenditures tax credits, seed capital investment tax credits, agricultural business investment tax credits, and a legislative council study; to repeal sections 57-38-71, 57-38-72, 57-38-73, and 57-38-74 of the North Dakota Century Code, relating to beginning entrepreneur income tax incentives; to provide effective dates; to provide an expiration date; and to declare an emergency.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the department of commerce in section 3 of this Act as follows:

Salaries and wages	\$7,761,428
Operating expenses	9,531,968
Capital assets	25,000
Grants	50,102,870

Agricultural products utilization	3,016,000
Discretionary funds	1,450,127
Economic development initiatives	644,568
Lewis and Clark bicentennial	3,933,103
Economic development grants	150,000
Total all funds - Base level	<u>\$76,615,064</u>
Less estimated income - Base level	<u>57,434,283</u>
Total general fund - Base level	\$19,180,781

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the department of commerce which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$1,075,807
Operating expenses	4,865,720
Grants	(1,628,122)
North Dakota development fund	3,000,000
Agricultural products utilization	(7,807)
Economic development initiatives	652,278
Economic development grants	(100,000)
Lewis and Clark bicentennial	(3,933,103)
North Dakota trade office	1,500,000
Total all funds - Adjustments/enhancements	<u>\$5,424,773</u>
Less estimated income - Adjustments/enhancements	<u>(1,672,990)</u>
Total general fund - Adjustments/enhancements	\$7,097,763

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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 commerce for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Salaries and wages	\$8,837,235
Operating expenses	14,397,688
Capital assets	25,000
Grants	48,474,748
North Dakota development fund	3,000,000
Discretionary funds	1,450,127
Economic development initiatives	1,296,846
Agricultural products utilization	3,008,193
Economic development grants	50,000
North Dakota trade office	1,500,000
Total all funds	<u>\$82,039,837</u>
Less estimated income	<u>55,761,293</u>
Total general fund appropriation	\$26,278,544

**SECTION 4. AGRICULTURE FUEL TAX REFUNDS.** The estimated income line item in section 3 of this Act includes \$575,000 from refunds of tax for fuel used for agricultural purposes, to be used by the agricultural products utilization commission, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 5. EXEMPTION.** The amount appropriated for the agricultural products utilization commission in section 3 of chapter 46 of the 2005 Session Laws is not subject to section 54-44.1-11 and any unexpended funds from this line item for

grants are available for grants during the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 6. EXEMPTION.** The amount appropriated for the discretionary funds line item in section 3 of chapter 46 of the 2005 Session Laws is not subject to section 54-44.1-11 and any unexpended funds from this line item are available during the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 7. TAX COMMISSIONER - AUDIT OF ETHANOL PRODUCTION INCENTIVE PROGRAM.** The tax commissioner shall conduct an audit of the ethanol production incentive program during the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 8. EXEMPTION - STATE EMPLOYEE COMPENSATION ADJUSTMENT GUIDELINES - REPORT.** Notwithstanding the provisions of Senate Bill No. 2189, as approved by the sixtieth legislative assembly, the department of commerce shall develop and implement a system for providing compensation adjustments to its employees for the biennium beginning July 1, 2007, and ending June 30, 2009. The system must provide for the determination of each employee's compensation adjustments to be based on performance, merit, and equity. Of the funds appropriated in section 3 of this Act, the department may utilize up to \$428,542 for these compensation adjustments. The department shall provide a report on its compensation system to the human resource management services division of the office of management and budget by December 31, 2007.

**SECTION 9. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The total general fund appropriation line item in section 3 of this Act includes \$3,000,000 for transfer to the development fund and \$100,000 for tax expenditure and business incentive expenditure reports which are one-time funding items. These amounts are not a part of the agency's base budget to be used in preparing the 2009-11 executive budget. The department of commerce shall report to the appropriations committees of the sixty-first legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 10. TRADE OFFICE - MATCHING FUND REQUIREMENT.** The total general fund appropriation in section 3 of this Act includes \$1,500,000 of funding relating to the North Dakota trade office. The department of commerce may spend fifty percent of this amount without requiring any matching funds from the trade office. Any additional amounts may be spent only to the extent that the North Dakota trade office provides one dollar of matching funds from private or other public sources for each one dollar provided by the department for the biennium beginning July 1, 2007, and ending June 30, 2009. Matching funds may include money spent by businesses or organizations to pay salaries to export assistants, provide training to export assistants, or buy computer equipment as part of the North Dakota trade office's export assistance program.

**SECTION 11. TRANSFER AUTHORIZATION - PACE FUND TO DEVELOPMENT FUND.** The state industrial commission, upon the request of the commissioner of commerce, may transfer up to \$1,000,000 from the partnership in assisting community expansion fund to the North Dakota development fund for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 12. INTERNSHIP PROGRAM - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The department of commerce shall report to the appropriations committees of the sixty-first legislative assembly regarding the

internship program. The report must include information on the program's activities, statistics, and accomplishments to date during the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 13. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$70,000, or so much of the sum as may be necessary, to the department of career and technical education for the purpose of funding grants for innovation, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 14. APPROPRIATION - OFFICE OF MANAGEMENT AND BUDGET - CENTERS OF EXCELLENCE.** There is appropriated out of any moneys in the permanent oil tax trust fund in the state treasury, not otherwise appropriated, the sum of \$15,000,000, or so much of the sum as may be necessary, to the office of management and budget for the purpose of providing funding to centers of excellence as directed by the centers of excellence commission, for the biennium beginning July 1, 2007, and ending June 30, 2009. Of this amount, up to \$10,000,000 is available for budget section approval at its first meeting after September 1, 2007, and up to \$5,000,000 and any unawarded funds remaining from the \$10,000,000 allocation is available for budget section approval at its first meeting after September 1, 2008.

**SECTION 15. CENTERS OF EXCELLENCE - OFFICE OF MANAGEMENT AND BUDGET - CONTINGENT BORROWING AUTHORITY - APPROPRIATION.** As requested by the centers of excellence commission and subject to emergency commission and budget section approval, the office of management and budget shall borrow the sum of \$5,000,000, or so much of the sum as may be necessary, from the Bank of North Dakota, which is appropriated for the purpose of providing funding to centers of excellence as directed by the centers of excellence commission, for the biennium beginning July 1, 2007, and ending June 30, 2009. The office of management and budget shall request funding from the sixty-first legislative assembly to repay any loan obtained pursuant to provisions of this section, including accrued interest. The borrowing authority and appropriation provided for in this section are available only if all other funding provided by the sixtieth legislative assembly for centers of excellence has been obligated.

**SECTION 16. APPROPRIATION - OFFICE OF MANAGEMENT AND BUDGET - PRAIRIE PUBLIC BROADCASTING.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$2,023,138, or so much of the sum as may be necessary, to the office of management and budget for the purpose of providing funding to prairie public broadcasting, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 17. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The general fund appropriation in section 16 of this Act includes \$686,000 for an analog to digital conversion project which is a one-time funding item. These amounts are not a part of the office of management and budget's base budget to be used in preparing the 2009-11 executive budget. The office of management and budget shall report to the appropriations committees of the sixty-first legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 18. SECRETARY OF STATE LOAN AUTHORIZATION - CONTINGENT APPROPRIATION - BUDGET SECTION APPROVAL.** Subject to budget section approval, the secretary of state may borrow up to \$2,920,000 from the

Bank of North Dakota which is appropriated to the secretary of state for the purpose of implementing the North Dakota business development engine information technology project during the biennium beginning July 1, 2007, and ending June 30, 2009. The secretary of state may request budget section approval only if the revenues projected by the secretary of state and the office of management and budget to be generated as a result of provisions of House Bill No. 1340 over the term of the proposed loan based on the trend of actual corporate charters granted are anticipated to exceed the revenues projected by the sixtieth legislative assembly relating to this bill by an amount sufficient to repay the proposed loan, including interest over the term of the loan.

**SECTION 19. RENAISSANCE ZONE CONFERENCE - LEGISLATIVE COUNCIL PARTICIPATION - REPORT TO LEGISLATIVE COUNCIL.** The department of commerce, during the 2007-08 interim, shall organize, host, and facilitate a renaissance zone conference. The department shall extend invitations to participate in the conference to representatives of each of the state's renaissance zone communities, other community representatives interested in this concept, and to legislators who are members of the legislative council interim committee studying economic development-related issues. Legislators who are members of the interim committee studying economic development-related issues shall attend the conference as part of their interim committee responsibilities. The purpose of the conference is to provide a forum at which the department, legislators, and renaissance zone and other community members may review the list of projects in the state which have been undertaken under the renaissance zone program, evaluate whether the projects have positively impacted the renaissance zone communities, consider options for smaller communities to become involved in the renaissance zone program or a similar program, and make recommendations regarding how the program could be improved to further meet the needs of the state and local communities. Before July 1, 2008, the department of commerce shall report to the legislative council on the conference activities and the department's legislative and administrative recommendations resulting from the conference.

**SECTION 20. LEGISLATIVE COUNCIL STUDY - NORTH DAKOTA WORKFORCE SYSTEM INITIATIVE.**

1. During the 2007-08 interim, the legislative council shall study the state's system for addressing workforce needs through a workforce system initiative. The workforce system initiative must include receipt of agency reports regarding implementation of workforce legislation enacted during the 2007 legislative session, active participation in focus groups across the state, and active participation in a workforce congress.
2. The focus groups shall discuss ways to enhance the state's system for addressing workforce needs, including consideration of workforce availability, skilled workforce needs, future workforce needs, and alignment of the state's higher education curriculum with the state's current and future workforce needs. The workforce congress shall receive a report on the activities of the focus groups, identify methods to enhance the state's workforce system in order to be well-positioned to participate in a knowledge-driven economy and to be globally competitive, and evaluate the impact and effectiveness of the state's existing workforce system.
3. The department of commerce shall organize the focus groups and the workforce congress. Before the workforce congress, which must be held before June 1, 2008, the department shall convene a minimum of



four focus groups. The department shall consult with the legislative council in compiling focus group and workforce congress participant invitation lists and drafting and distributing invitations, establishing focus group and workforce congress dates and locations, and preparing agendas for focus groups and the workforce congress. The focus groups and the workforce congress schedules and activities must take into consideration workforce study activities of the department.

4. The legislative council and the department of commerce shall enter a joint contract with a third party to provide the legislative council and the department with professional services to plan, facilitate, report on, and coordinate followup for the focus groups and workforce congress. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 21. LEGISLATIVE COUNCIL STUDY - DEPARTMENT OF COMMERCE.**

1. The legislative council shall consider studying, during the 2007-08 interim, the organization, powers, duties, and effectiveness of the department of commerce. The study must include:
  - a. A review of the legislative history leading to the creation of the department of commerce, including the 1999-2000 interim activities of the legislative council's interim commerce and labor committee;
  - b. A review of the legislative and executive branch expectations in the creation of the department of commerce and whether those expectations are being met;
  - c. Evaluation of the effectiveness of the North Dakota economic development foundation in providing a nonpartisan, private sector perspective to the department's approach to the department's duties;
  - d. Evaluation of the organizational structure of the department of commerce, including whether the department should include a division of science and technology; and
  - e. Evaluation of the strategic planning process of the department of commerce and its effectiveness.
2. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 22. LEGISLATIVE COUNCIL STUDY - HIGHER EDUCATION PROMISE GRANT PROGRAM.** The legislative council shall consider studying, during the 2007-08 interim, the desirability and feasibility of implementing a grant program for North Dakota students who are attending North Dakota institutions of higher education and who have excelled academically. The study shall include consideration of desirable eligibility criteria for students under such a grant program, funding options for such a grant program, and a cost-benefit analysis of such a grant program. The legislative council shall report its findings and recommendations,

together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 23. STATE BOARD OF HIGHER EDUCATION REPORT ON CCBENEFITS - LEGISLATIVE COUNCIL REPORT.** During the 2007-08 interim, the state board of higher education shall monitor the implementation of the services of ccbenefits, incorporated, by the institutions under the control of the state board of higher education. Before July 1, 2008, the state board of higher education shall report to the legislative council on the status of the implementation of the ccbenefits, incorporated, services, including the status of the implementation at each institution using the services, the level of utilization of the services at the institutional level and at the system level, the feasibility and desirability of expanding the use of the services from use by the community colleges to use by all institutions in order to improve responsiveness of institutions and to improve forecasting efforts of institutions, and recommendations relating to the use of the ccbenefits, incorporated, services. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 24. TAX EXPENDITURE REPORT PILOT PROJECT - REPORT.**

1. During the 2007-09 biennium, the commissioner of commerce, in consultation with the tax commissioner, shall select three tax expenditures for the purposes of conducting a tax expenditure report pilot project.
2. Before the tenth legislative day of the sixty-first legislative assembly, the commissioner of commerce shall submit to the president pro tempore of the senate and the speaker of the house a tax expenditure report. This report must be based upon information available to the tax commissioner and information available to the department of commerce, and must include an analysis of the selected tax expenditures which includes a description of the annual state revenue losses and benefits and a cyclical analysis of these losses and benefits.
3. The tax commissioner shall compile tax expenditure data and provide this data to the department of commerce. Notwithstanding section 57-38-57 and other confidentiality statutes, the tax commissioner shall provide the department of commerce the information necessary to accomplish and effectuate the intent of this section. The tax commissioner may request the assistance of the office of management and budget as necessary to compile this tax expenditure data.
4. The tax commissioner may establish the procedure by which the tax commissioner will compile the tax expenditure data and the format in which the tax commissioner will provide this data to the department of commerce. The department of commerce may establish the manner in which the tax expenditure data will be analyzed, organized, and presented in the report.
5. Confidential tax information the department of commerce receives from the tax commissioner may not be divulged by the department of commerce unless the information is in the aggregate and in a manner that will not divulge information specific to any taxpayer.

6. For purposes of this section, the term tax expenditure means a provision in the state tax laws, including an exclusion, a deduction, a tax preference, a credit, and a deferral designed to encourage certain activities or to aid a taxpayer in special circumstances.

**SECTION 25. STATE BUSINESS INCENTIVE EXPENDITURE REPORT PILOT PROJECT - REPORT.**

1. During the 2007-09 biennium, the commissioner of commerce shall select a state business incentive for the purposes of conducting a state business incentive expenditure report pilot project.
2. Before the tenth legislative day of the sixty-first legislative assembly, the commissioner of commerce shall submit to the president pro tem of the senate and the speaker of the house a state business incentive expenditure report. This report must be based upon information available to the department and must include an analysis of the selected state business incentive which includes a description of the annual state revenue losses and benefits and a cyclical analysis of these losses and benefits.
3. The administering agency for the selected state business incentive shall compile state business incentive expenditure data and provide this data to the department. The department shall determine the data appropriate to measure the losses and benefits for the selected state business incentive and shall inform the administering agency of the specific data required and the format in which the administering agency shall provide this data to the department.
4. For purposes of this section, the term business incentive does not include a tax expenditure as defined under section 20 of this Act.

**SECTION 26. TAX CREDIT TRANSFER STUDY - REPORT.** During the 2007-09 biennium the tax commissioner shall monitor the implementation and use of transferable tax credits. Before the tenth legislative day of the sixty-first legislative assembly, the tax commissioner shall submit to the president pro tempore of the senate and the speaker of the house a tax credit transfer report. This report must be based upon information available to the tax commissioner and must include an analysis of the transferred tax credits, a description of the annual state revenue losses and benefits, and the impact on the sellers and purchasers of the tax credits.

**SECTION 27. LEGISLATIVE COUNCIL STUDY - HOUSING NEEDS.** During the 2007-08 interim, the legislative council shall consider studying the state's housing needs and how unmet housing needs may affect economic development in the state. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 28. LEGISLATIVE COUNCIL STUDY - WIRELESS SERVICE PROVIDERS.** During the 2007-08 interim, the legislative council shall consider studying issues relating to wireless service providers in the state and how wireless service impacts the business climate in the state. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 29.** A new section to chapter 15-20.1 of the North Dakota Century Code is created and enacted as follows:

**Grants for innovation.** The department shall design and implement a program to provide a dollar-for-dollar match to elementary or secondary teachers or schools and to institutions of higher education for the purpose of funding innovative science, technology, or innovation programs for students in kindergarten through grade twelve. The department shall award the grants on a competitive basis. A grant awarded under this section to an elementary or secondary teacher or school may not exceed seven thousand five hundred dollars and a grant awarded to an institution of higher education may not exceed twenty-five thousand dollars. The matching funds of a grant recipient may come from a public source, a private source, or any combination of public and private sources. The department shall consult with the department of commerce in making award determinations.

**SECTION 30. AMENDMENT.** Section 15-69-02 of the North Dakota Century Code is amended and reenacted as follows:

**15-69-02. (Effective through July 31, 2011) Centers of excellence.**

1. The board shall establish a centers of excellence program relating to economic development. The program must distinguish among center designations for awards designated to address commercialization and infrastructure needs. Workforce may not be the primary need addressed by a center. Through the program the commission shall make funding award recommendations for commission-approved applications to the board, the foundation, the emergency commission, and the budget section of the legislative council. A center must be an institution of higher education under the control of the board or a nonprofit university-related or college-related foundation of an institution of higher education under the control of the board. In order to be considered for center designation, the institution of higher education or nonprofit foundation must be working in partnership with the private sector. For an application that includes infrastructure to be considered for center designation, the application must provide detailed information regarding how the future operational costs and maintenance costs related to the infrastructure will be provided and how the costs will not be provided from the general fund. In addition to any center designated under this chapter, the North Dakota state university center for technology enterprise and the university of North Dakota center for innovation are centers.
2. A commission funding award recommendation must be for a specified amount. Designation of a center occurs upon board, foundation, and budget section approval of a commission funding award recommendation. In considering whether to designate a center, the board, foundation, and budget section may not modify the commission recommendation. The budget section may not ~~make a determination of whether to approve or reject a~~ take action on an original commission funding award recommendation until the emergency commission reviews the commission recommendation and makes a recommendation to the budget section. Upon receipt of a commission funding award recommendation, the budget section shall approve the recommendation, reject the recommendation, or rerefer the recommendation to the commission with recommended modifications. If the commission receives a rereferred recommendation from the budget

section, the commission shall determine whether to modify the recommendation or whether to retain the recommendation and provide additional information with the recommendation.

- a. If within thirty days of the budget section rereferring a recommendation the commission makes a determination of whether to modify the recommendation or to retain the recommendation and within the same thirty days the emergency commission meets to review the modified recommendation or the retained recommendation accompanied by additional information, the emergency commission shall approve or reject the recommendation. If within the thirty days following the budget section rereferral the emergency commission acts under this subdivision, the determination of the emergency commission is final and the recommendation is approved or rejected.
  - b. If thirty days expire following the budget section's rereferral and the process under subdivision a is not completed timely, the commission shall submit to the budget section the modified recommendation or the retained recommendation. Upon receipt of the recommendation under this subdivision, the budget section shall approve or reject the recommendation. The budget section may not rerefer a recommendation received under this subdivision.
3. A center that receives funds distributed under this chapter is not qualified to receive subsequent designations as a center until the biennium following the center's most recent designation.
  4. The board rules adopted under subsection 9 of section 15-10-17, relating to ownership of intellectual property, inventions, and discoveries, must address activities and issues unique to centers.

**SECTION 31. AMENDMENT.** Section 15-69-03 of the North Dakota Century Code is amended and reenacted as follows:

**15-69-03. (Effective through July 31, 2011) Centers of excellence commission.** The centers of excellence commission consists of six members. The foundation shall appoint three of the foundation's members to serve on the commission and the board shall appoint three of the board's members to serve on the commission. The commission members shall designate a chairman and a vice chairman of the commission. Each member of the commission shall serve for a term of three years, beginning July first; may be reappointed for additional terms; and serves at the pleasure of the appointing entity. If a commission member ceases to serve as a member of the appointing entity, that member's membership on the commission ceases immediately and the appointing entity shall appoint a new member for the remainder of the term. ~~Terms of initial commission members begin on July 1, 2005, and~~ must be staggered. On a meeting-by-meeting basis, an appointing entity may substitute a member of that appointing entity to serve in place of one of the regular members appointed by that entity. If the commission chairman and vice chairman are not present at a meeting, the commission members present at that meeting shall select a commission member to serve as chairman for that meeting. A commission member may receive compensation and travel and expense reimbursement from the appointing entity. ~~The board~~ department of commerce shall provide the commission with appropriate staff services as may be requested by the commission.

**SECTION 32. AMENDMENT.** Section 15-69-04 of the North Dakota Century Code is amended and reenacted as follows:

**15-69-04. (Effective through July 31, 2011) Application - Eligibility requirements.**

1. The ~~board~~ department of commerce shall provide center application forms, accept applications, review applications for completeness and compliance with board and commission policy, ~~and~~ forward complete applications to the commission in accordance with guidelines established by the commission, and assist with preaward reviews and postaward monitoring as may be requested by the commission.
2. The commission shall meet as necessary to review all complete applications; consider the potential need for independent, expert review of complete applications; approve or disapprove complete applications; make funding award recommendations for commission-approved proposed centers; direct the office of management and budget to distribute funds to the centers; monitor centers for compliance with award requirements; ~~and~~ review changes in assertions made in center applications; and conduct postaward monitoring of centers.
3. In considering whether to approve or disapprove an application, the commission shall determine whether the applicant has conducted the due diligence necessary to put together a viable proposal, the commission shall determine whether the applicant has provided information in the application which clearly outlines how the matching fund requirement will be met, and the commission shall consider whether the center will:
  - a. Use university or college research to promote private sector job growth and expansion of knowledge-based industries or use university or college research to promote the development of new products, high-tech companies, or skilled jobs in this state;
  - b. Create high-value private sector employment opportunities in this state;
  - c. Provide for public-private sector involvement and partnerships;
  - d. Leverage other funding;
  - e. Increase research and development activities that may involve federal funding from the national science foundation experimental program to stimulate competitive research;
  - f. Foster and practice entrepreneurship;
  - g. Promote the commercialization of new products and services in industry clusters;
  - h. Become financially self-sustaining; and
  - i. Establish and meet a deadline for acquiring and expending all public and private funds specified in the application.

4. In considering whether to approve an application, the commission may provide for an independent, expert review of the application to determine whether the proposed center is viable and whether the proposed center is likely to have the desired economic impact. As necessary, the commission may contract for additional technical review of applications. The commission may not approve an application unless the commission determines the proposed center has a high likelihood of viability and success in positively impacting economic development in the state.
5. For no fewer than six years and no more than ten years following center designation, the commission shall monitor the center's activities in order to determine whether the center is having the desired economic impact.

**SECTION 33. AMENDMENT.** Section 15-69-05 of the North Dakota Century Code is amended and reenacted as follows:

**15-69-05. (Effective through July 31, 2011) Use of funds - Terms of funds - Distribution of funds.**

1. A center shall use funds awarded under this chapter to enhance capacity; enhance infrastructure; and leverage state, federal, and private sources of funding. A center awarded funds under this chapter may not use the funds to supplant funding for current operations or academic instructions or to pay indirect costs.
2. As a condition for receipt of funds under this chapter, a center shall agree to provide the board, foundation, and budget section of the legislative council with annual audits on all funds distributed to the center under this chapter. The annual audits must be provided until the completion of four years following the final distribution of funds under this chapter the commission's postaward monitoring of the center. As a condition for receipt of funds under this chapter, a center shall agree to provide the commission with the information necessary to monitor the postaward activities of the center.
3. Before the commission directs the office of management and budget to distribute funds awarded under this chapter, the center shall provide the commission with detailed documentation of private sector participation and the availability of two dollars of matching funds for each dollar of state funds to be distributed under this chapter. The matching funds may include funds facilitated through the collaboration of the private sector participants with other funding entities. The matching funds may include a combination of cash and in-kind assets with itemized value. Private sector participation may be established through equity investments or through contracts for services with private sector entities. In making funding recommendations and designation determinations, the commission, board, foundation, and budget section shall give major consideration to the portion of the matching funds provided in cash by the private sector.
4. The commission shall direct the office of management and budget to distribute the funds awarded under this chapter in disbursements consistent with the center's budget and timeframe outlined in the approved award. The commission may not direct distribution of funds

under this chapter if there are no private sector partners participating or if the statutorily required matching funds are not available.

5. If, before funds are distributed by the office of management and budget, a center undergoes a change in the terms of or assertions made in its application, the commission may direct that the office of management and budget withhold all or a portion of any undistributed funds pending commission review of the changes.
6. The commission may use funds appropriated for the centers of excellence program to pay for the commission's administrative expenses, which may include contracting for independent, expert reviews of complete applications and centers of excellence forums. The amount of funds the commission uses each biennium for administrative expenses may not exceed two and one-half percent of the funds appropriated for the program that biennium.

**SECTION 34. AMENDMENT.** Subsections 4 and 6 of section 54-17-07.3 of the North Dakota Century Code are amended and reenacted as follows:

4. Mortgage loan financing program. A program or programs to provide for the purchase or guaranty of a temporary or permanent mortgage ~~loans~~ loan originated by lenders a lender on residential real property or on land to be developed into residential real property, in addition to such a mortgage ~~loans~~ loan acquired or to be acquired under subsections 1 through 3. A program authorized under this subsection may provide assistance in the development of low to moderate income housing or to otherwise assist a developing community in the state address an unmet housing need or alleviate a housing shortage.
6. Housing grant program. A program or programs to provide ~~grants a~~ grant other than those authorized by section 54-17-07.6 to encourage and promote housing availability for persons of low or moderate income or to otherwise assist a developing community in this state address an unmet housing need or alleviate a housing shortage.

**SECTION 35. AMENDMENT.** Section 54-60-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-60-02. Department of commerce - Divisions.** The North Dakota department of commerce is created. All records, materials, supplies, and equipment used by the division of community services, department of economic development and finance, and the department of tourism are transferred to the department.

1. The department must consist of:
  - a. A division of community services;
  - b. A division of economic development and finance;
  - c. A division of tourism;
  - d. A division of workforce development; and
  - e. Any division the commissioner determines necessary to carry out this chapter.



2. The commissioner shall appoint the director of ~~any each~~ division created by the commissioner under subsection 1. ~~Effective August 1, 2003, the commissioner shall appoint the directors of the division of community services, division of economic development and finance, and division of workforce development. Effective August 1, 2005, the commissioner shall appoint the director of the division of tourism of the department.~~ Each director appointed by the commissioner serves at the pleasure of the commissioner and is entitled to receive a salary set by the commissioner within the limits of legislative appropriations. ~~Until August 1, 2003, the governor shall appoint the directors of the division of community services, division of economic development and finance, and division of workforce development and until August 1, 2005, the governor shall appoint the director of the division of tourism. The individuals appointed by the governor shall serve at the pleasure of the governor and are entitled to receive a salary set by the governor within the limits of legislative appropriations.~~

**SECTION 36. AMENDMENT.** Section 54-60-09 of the North Dakota Century Code is amended and reenacted as follows:

**54-60-09. Division of workforce development - Duties.** The division of workforce development shall ~~actively~~:

1. Actively monitor local, regional, and national private and public workforce development initiatives.
2. Develop and implement the state's talent strategy.
3. Develop and implement a statewide intelligence coordination strategy.

**SECTION 37.** Three new sections to chapter 54-60 of the North Dakota Century Code are created and enacted as follows:

**Division of workforce development - Higher education internships and work experience opportunities.** The division of workforce development shall administer a program to increase use of higher education internships and work experience opportunities for higher education students. The primary focus of this program must be higher education internships in target industries. This program shall provide services to employers, communities, and business organizations to increase higher education internship and work experience opportunities.

**Division of workforce development - Career specialist.** The division of workforce development, in consultation with the department of career and technical education, job service North Dakota, and the superintendent of public instruction, shall develop and implement a program to assist public schools in promoting North Dakota career opportunities to students in grades nine through twelve.

**Division of workforce development - Talent strategy - Performance and accountability.**

1. The division of workforce development, in developing and implementing the state's talent strategy, shall:
  - a. Consult with partners in the state's system for workforce development, workforce training, and talent attraction, including job service North Dakota, the department of career and technical

education, the superintendent of public instruction, the state board of higher education, the department of human services, and other divisions of the department of commerce.

- b. Develop a comprehensive, consolidated biennial statewide strategic plan for the state's system for workforce development, workforce training, and talent attraction.
  - c. Continuously review, identify how to improve, and implement improvements to the state's system for workforce development, workforce training, and talent attraction.
  - d. Develop linkages between partners of the state's system for workforce development, workforce training, and talent attraction, to assure coordination and nonduplication of programs and services provided in the state.
2. The division of workforce development shall develop and implement a system of performance and accountability measures for the state's system for workforce development, workforce training, and talent attraction. Each partner of the state's system for workforce development, workforce training, and talent attraction shall cooperate in providing the division the data necessary to implement these measures.

**SECTION 38.** A new section to chapter 54-60 of the North Dakota Century Code is created and enacted as follows:

**Beginning again North Dakota pilot program - Continuing appropriation - Report to legislative council.**

1. The department shall implement and administer a beginning again North Dakota pilot program. The purpose of the program is to develop a data base of skills and other assets of communities and residents to be used to advance the internal and external attitude and image of this state and the communities in this state. The department shall implement this program in one city with a population of not more than one thousand five hundred and one city with a population of more than one thousand five hundred but not more than three thousand five hundred.
2. The department shall assemble state and local asset data from a broad range of sources. The sources for data may include the department, Bank of North Dakota, game and fish department, state historical society, Indian affairs commission, job service North Dakota, parks and recreation department, superintendent of public instruction, North Dakota university system, workforce safety and insurance, and state and local public and private entities. The nature of the data regarding skills and other assets may cover a broad range of information that may be valuable to advance the attitude or image of the state and communities in the state. The data may include natural resources, real estate, educational resources, cultural resources, vocational resources, financial resources, and infrastructure resources.
3. The department shall use the information assembled in the data base to assist in strategic plans for development. Additionally, the department

may use the information in the data base to assist local developers in strategic plans for development.

4. The department may contract with a public or private third party to provide any or all of the services necessary to implement and administer the program. The department may solicit support and contributions from public and private sources for the purpose of furthering the program. The department may charge a fee for the services provided to the community. The department shall deposit in a special account in the state treasury all funds collected under this subsection. All funds deposited under this section are appropriated to the department on a continuing basis for the purpose of furthering the program.
5. The two cities shall be willing to participate and provide significant financial resources to provide for the costs of the pilot program.
6. During the 2007-08 interim, the commissioner shall provide a report to the legislative council regarding the implementation of the program, successes and failures of the program, and whether the program should be continued or be continued and expanded to additional communities.

<sup>10</sup> **SECTION 39. AMENDMENT.** Subdivision 1 of subsection 2 of section 54-60.1-01 of the North Dakota Century Code is amended and reenacted as follows:

- I. ~~Except for a center of excellence award under chapter 15-69, assistance~~ Assistance for a collaboration between a North Dakota institution of higher education and a business.

**SECTION 40.** A new section to chapter 55-10 of the North Dakota Century Code is created and enacted as follows:

**Ronald Reagan historic site.** If the state historical society acquires a missile silo historic site, the site is named the Ronald Reagan historic site.

<sup>11</sup> **SECTION 41. AMENDMENT.** The new section to chapter 57-06 of the North Dakota Century Code as created by section 2 of House Bill No. 1072, and as amended by section 2 of House Bill No. 1317, as approved by the sixtieth legislative assembly, is amended and reenacted as follows:

**Taxable valuation of centrally assessed wind turbine electric generators.**

A centrally assessed wind turbine electric generation unit with a nameplate generation capacity of one hundred kilowatts or more on which construction is completed before ~~July 1, 2007~~ January 1, 2011, must be valued at ~~the current three percent of assessed value to determine taxable valuation of the property.~~ A centrally assessed wind turbine electric generation unit with a nameplate generation capacity of one hundred kilowatts or more, on which construction is completed after June 30, 2007, and before January 1, 2011, must be valued at one and one-half percent of

<sup>10</sup> Section 54-60.1-01 was also amended by section 1 of House Bill No. 1095, chapter 494, and section 4 of House Bill No. 1128, chapter 464.

<sup>11</sup> Section 57-06-14.1 was created by section 2 of House Bill No. 1072, chapter 504; was also amended by section 2 of House Bill No. 1317, chapter 505.

~~assessed value to determine taxable valuation of the property. However, a centrally assessed wind turbine electric generation unit with nameplate generation capacity of one hundred kilowatts or more, for which construction is begun after July 1, 2007, and before January 1, 2011, must be valued at one and one-half percent of assessed value to determine taxable valuation of the property. except:~~

- ~~1. A centrally assessed wind turbine electric generation unit with a nameplate generation capacity of one hundred kilowatts or more, for which a purchased power agreement has been executed after April 30, 2005, and before January 1, 2006, and construction is completed after April 30, 2005, and before July 1, 2006, must be valued at one and one-half percent of assessed value to determine taxable valuation of the property for the duration of the initial purchased power agreement for the generation unit; and~~
- ~~2. A centrally assessed wind turbine electric generation unit with a nameplate generation capacity of one hundred kilowatts or more, on which construction is completed after June 30, 2006, and before January 1, 2011, must be valued at one and one-half percent of assessed value to determine taxable valuation of the property.~~

**SECTION 42.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

**Angel fund investment tax credit.** A taxpayer is entitled to a credit against state income tax liability under sections 57-38-29, 57-38-30, or 57-38-30.3 for an investment made in an angel fund that is incorporated in this state. The angel fund must be in compliance with the securities laws of this state for the investment to qualify for the tax credit under this section. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in an angel fund during the taxable year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five thousand dollars. To be eligible for the credit, the investment must be at risk in the angel fund for at least three years. Investments placed in escrow do not qualify for the credit. The credit must be claimed in the taxable year in which the investment in the angel fund was received by the angel fund. The credit allowed may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the four succeeding taxable years. A taxpayer claiming a credit under this section may not claim any credit available to the taxpayer as a result of an investment made by the angel fund in a qualified business under chapter 57-38.5 or 57-38.6.

<sup>12</sup> **SECTION 43.** A new subdivision to subsection 1 of section 57-38-01.2 of the North Dakota Century Code is created and enacted as follows:

Reduced by the amount received by a taxpayer that was paid by an employer under paragraph 4 of subdivision a of subsection 2 of section 57-38-01.25 to hire the taxpayer for a hard-to-fill position under section 57-38-01.25, but only to the extent the amount received by the taxpayer is included in federal taxable income.

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<sup>12</sup> Section 57-38-01.2 was also amended by section 2 of House Bill No. 1091, chapter 89, and section 1 of House Bill No. 1393, chapter 513.

The reduction applies only if the employer is entitled to the tax credit under section 57-38-01.25. The taxpayer must attach a statement from the employer certifying that the employer is entitled to the credit under section 57-38-01.25 and identifying the type and the amount of the payment to the employee.

**SECTION 44.** Section 57-38-01.24 of the North Dakota Century Code is created and enacted as follows:

**57-38-01.24. Internship employment tax credit.**

1. A taxpayer that is an employer within this state is entitled to a credit as determined under this section against state income tax liability under section 57-38-29, 57-38-30, or 57-38-30.3 for qualified compensation paid to an intern employed in this state by the taxpayer. To qualify for the credit under this section, the internship program must meet the following qualifications:
  - a. The intern must be an enrolled student in an institution of higher education or vocational technical education program who is seeking a degree or a certification of completion in a major field of study closely related to the work experience performed for the taxpayer;
  - b. The internship must be taken for academic credit or count toward the completion of a vocational technical education program;
  - c. The intern must be supervised and evaluated by the taxpayer; and
  - d. The internship position must be located in this state.
2. The amount of the credit to which a taxpayer is entitled is ten percent of the stipend or salary paid to a college intern employed by the taxpayer. A taxpayer may not receive more than three thousand dollars in total credits under this section for all taxable years combined.
  - a. The tax credit under this section applies to a stipend or salary for not more than five interns employed at the same time.
  - b. A partnership, subchapter S corporation, or limited liability company that for tax purposes is treated like a partnership that is entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 45.** Section 57-38-01.25 of the North Dakota Century Code is created and enacted as follows:

**57-38-01.25. Workforce recruitment credit for hard-to-fill employment positions.** A taxpayer that is an employer in this state is entitled to a credit as determined under this section against state income tax liability under section 57-38-29, 57-38-30, or 57-38-30.3 for costs the taxpayer incurred during the tax year

to recruit and hire employees for hard-to-fill employment positions within this state for which the annual salary for the position meets or exceeds the state average wage.

1. The amount of the credit to which a taxpayer is entitled is five percent of the salary paid for the first twelve consecutive months to the employee hired for the hard-to-fill employment position. To qualify for the credit under this section, the employee must be employed by the taxpayer in the hard-to-fill employment position for twelve consecutive months.
2. For purposes of this section:
  - a. "Extraordinary recruitment methods" means using all of the following:
    - (1) A person with the exclusive business purpose of recruiting employees and for which a fee is charged by that recruiter.
    - (2) An advertisement in a professional trade journal, magazine, or other publication, the main emphasis of which is providing information to a particular trade or profession.
    - (3) A web site, the sole purpose of which is to recruit employees and for which a fee is charged by the web site.
    - (4) Payment of a signing bonus, moving expenses, or nontypical fringe benefits.
  - b. "Hard-to-fill employment position" means a job that requires the employer to use extraordinary recruitment methods and for which the employer's recruitment efforts for the specific position have been unsuccessful for six consecutive calendar months.
  - c. "State average wage" means one hundred twenty-five percent of the state average wage published annually by job service North Dakota and which is in effect at the time the employee is hired.
3. The taxpayer may claim the credit in the first tax year beginning after the employee hired for the hard-to-fill position has completed the employee's first twelve consecutive months of employment in the hard-to-fill position with the taxpayer.
4. The credit under this section may not exceed a taxpayer's liability for the taxable year as determined under this chapter. Any amount of unused credit may be carried forward for up to four taxable years after the taxable year in which the credit could initially be claimed.
5. A partnership, subchapter S corporation, or limited liability company that for tax purposes is treated like a partnership that is entitled to the credit under this section must be considered to be the taxpayer for purposes of this section and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the members in proportion to their respective interests in the passthrough entity.

<sup>13</sup> **SECTION 46. AMENDMENT.** Section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30.3. Simplified method of computing tax.**

1. A tax is hereby imposed for each taxable year upon income earned or received in that taxable year by every resident and nonresident individual, estate, and trust. A taxpayer computing the tax under this section is only eligible for those adjustments or credits that are specifically provided for in this section. Provided, that for purposes of this section, any person required to file a state income tax return under this chapter, but who has not computed a federal taxable income figure, shall compute a federal taxable income figure using a pro forma return in order to determine a federal taxable income figure to be used as a starting point in computing state income tax under this section. The tax for individuals is equal to North Dakota taxable income multiplied by the rates in the applicable rate schedule in subdivisions a through d corresponding to an individual's filing status used for federal income tax purposes. For an estate or trust, the schedule in subdivision e must be used for purposes of this subsection.

a. Single, other than head of household or surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over \$27,050	2.10%
Over \$27,050 but not over \$65,550	\$568.05 plus 3.92% of amount over \$27,050
Over \$65,550 but not over \$136,750	\$2,077.25 plus 4.34% of amount over \$65,550
Over \$136,750 but not over \$297,350	\$5,167.33 plus 5.04% of amount over \$136,750
Over \$297,350	\$13,261.57 plus 5.54% of amount over \$297,350

b. Married filing jointly and surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over \$45,200	2.10%
Over \$45,200 but not over \$109,250	\$949.20 plus 3.92% of amount over \$45,200
Over \$109,250 but not over \$166,500	\$3,459.96 plus 4.34% of amount over \$109,250
Over \$166,500 but not over \$297,350	\$5,944.61 plus 5.04% of amount over \$166,500
Over \$297,350	\$12,539.45 plus 5.54% of amount over \$297,350

c. Married filing separately.

If North Dakota taxable income is:	The tax is equal to:
Not over \$22,600	2.10%
Over \$22,600 but not over \$54,625	\$474.60 plus 3.92% of amount over \$22,600
Over \$54,625 but not over \$83,250	\$1,729.98 plus 4.34% of amount over \$54,625
Over \$83,250 but not over \$148,675	\$2,972.31 plus 5.04% of amount over \$83,250
Over \$148,675	\$6,269.73 plus 5.54% of amount over \$148,675

d. Head of household.

<sup>13</sup> Section 57-38-30.3 was also amended by section 3 of House Bill No. 1091, chapter 89, section 2 of House Bill No. 1393, chapter 513, section 2 of House Bill No. 1403, chapter 519, section 1 of House Bill No. 1412, chapter 523, section 8 of Senate Bill No. 2032, chapter 520, section 1 of Senate Bill No. 2079, chapter 522, and section 2 of Senate Bill No. 2082, chapter 521.

If North Dakota taxable income is:	The tax is equal to:
Not over \$36,250	2.10%
Over \$36,250 but not over \$93,650	\$761.25 plus 3.92% of amount over \$36,250
Over \$93,650 but not over \$151,650	\$3,011.33 plus 4.34% of amount over \$93,650
Over \$151,650 but not over \$297,350	\$5,528.53 plus 5.04% of amount over \$151,650
Over \$297,350	\$12,871.81 plus 5.54% of amount over \$297,350

e. Estates and trusts.

If North Dakota taxable income is:	The tax is equal to:
Not over \$1,800	2.10%
Over \$1,800 but not over \$4,250	\$37.80 plus 3.92% of amount over \$1,800
Over \$4,250 but not over \$6,500	\$133.84 plus 4.34% of amount over \$4,250
Over \$6,500 but not over \$8,900	\$231.49 plus 5.04% of amount over \$6,500
Over \$8,900	\$352.45 plus 5.54% of amount over \$8,900

f. For an individual who is not a resident of this state for the entire year, or for a nonresident estate or trust, the tax is equal to the tax otherwise computed under this subsection multiplied by a fraction in which:

- (1) The numerator is the federal adjusted gross income allocable and apportionable to this state; and
- (2) The denominator is the federal adjusted gross income from all sources reduced by the net income from the amounts specified in subdivisions a and b of subsection 2.

In the case of married individuals filing a joint return, if one spouse is a resident of this state for the entire year and the other spouse is a nonresident for part or all of the tax year, the tax on the joint return must be computed under this subdivision.

g. For taxable years beginning after December 31, 2001, the tax commissioner shall prescribe new rate schedules that apply in lieu of the schedules set forth in subdivisions a through e. The new schedules must be determined by increasing the minimum and maximum dollar amounts for each income bracket for which a tax is imposed by the cost-of-living adjustment for the taxable year as determined by the secretary of the United States treasury for purposes of section 1(f) of the United States Internal Revenue Code of 1954, as amended. For this purpose, the rate applicable to each income bracket may not be changed, and the manner of applying the cost-of-living adjustment must be the same as that used for adjusting the income brackets for federal income tax purposes.

2. For purposes of this section, "North Dakota taxable income" means the federal taxable income of an individual, estate, or trust as computed under the Internal Revenue Code of 1986, as amended, adjusted as follows:

- a. Reduced by interest income from obligations of the United States and income exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
- b. Reduced by the portion of a distribution from a qualified investment fund described in section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political



subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.

- c. Reduced by the amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.
- d. Reduced by thirty percent of the excess of the taxpayer's net long-term capital gain for the taxable year over the net short-term capital loss for that year, as computed for purposes of the Internal Revenue Code of 1986, as amended. The adjustment provided by this subdivision is allowed only to the extent the net long-term capital gain is allocated to this state.
- e. Increased by the amount of a lump sum distribution for which income averaging was elected under section 402 of the Internal Revenue Code of 1986 [26 U.S.C. 402], as amended. This adjustment does not apply if the taxpayer received the lump sum distribution while a nonresident of this state and the distribution is exempt from taxation by this state under federal law.
- f. Increased by an amount equal to the losses that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.
- g. Reduced by the amount received by the taxpayer as payment for services performed when mobilized under title 10 United States Code federal service as a member of the national guard or reserve member of the armed forces of the United States. This subdivision does not apply to federal service while attending annual training, basic military training, or professional military education.
- h. Reduced by income from a new and expanding business exempt from state income tax under section 40-57.1-04.
- i. Reduced by interest and income from bonds issued under chapter 11-37.
- j. Reduced by up to ten thousand dollars of qualified expenses that are related to a donation by a taxpayer or a taxpayer's dependent, while living, of one or more human organs to another human being for human organ transplantation. A taxpayer may claim the reduction in this subdivision only once for each instance of organ donation during the taxable year in which the human organ donation and the human organ transplantation occurs but if qualified expenses are incurred in more than one taxable year, the reduction for those expenses must be claimed in the year in which the expenses are incurred. For purposes of this subdivision:
  - (1) "Human organ transplantation" means the medical procedure by which transfer of a human organ is made from the body of one person to the body of another person.
  - (2) "Organ" means all or part of an individual's liver, pancreas, kidney, intestine, lung, or bone marrow.

- (3) "Qualified expenses" means lost wages not compensated by sick pay and unreimbursed medical expenses as defined for federal income tax purposes, to the extent not deducted in computing federal taxable income, whether or not the taxpayer itemizes federal income tax deductions.
  - k. Increased by the amount of the contribution upon which the credit under section 57-38-01.21 is computed, but only to the extent that the contribution reduced federal taxable income.
  - l. Reduced by the amount of any payment received by a veteran or beneficiary of a veteran under section 37-28-03 or 37-28-04.
  - m. Reduced by the amount received by a taxpayer that was paid by an employer under paragraph 4 of subdivision a of subsection 2 of section 57-38-01.25 to hire the taxpayer for a hard-to-fill position under section 57-38-01.25, but only to the extent the amount received by the taxpayer is included in federal taxable income. The reduction applies only if the employer is entitled to the credit under section 57-38-01.25. The taxpayer must attach a statement from the employer in which the employer certifies that the employer is entitled to the credit under section 57-38-01.25 and which specifically identified the type of payment and the amount of the exemption under this section.
3. Married individuals filing a joint federal income tax return shall file a joint state income tax return if the return is filed under this section. If separate federal income tax returns are filed, one spouse's state income tax return may be filed under this section and the other spouse's income tax return may be filed under the other provisions of this chapter.
  4.
    - a. A resident individual, estate, or trust must be allowed a credit against the tax otherwise due under this section for the amount of any income tax imposed on the taxpayer for the taxable year by another state or territory of the United States or the District of Columbia on income derived from sources therein and which is also subject to tax under this section.
    - b. The credit provided under this subsection may not exceed the proportion of the tax otherwise due under this section that the amount of the taxpayer's adjusted gross income derived from sources in the other taxing jurisdiction bears to the taxpayer's federal adjusted gross income as reported on the taxpayer's federal income tax return.
    - c. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner.
  5. Individuals, estates, or trusts that file an amended federal income tax return changing their federal taxable income figure for a year for which an election to file state income tax returns has been made under this section shall file an amended state income tax return to reflect the changes on the federal income tax return.

6. The tax commissioner may prescribe procedures and guidelines to prevent requiring income that had been previously taxed under this chapter from becoming taxed again because of the provisions of this section and may prescribe procedures and guidelines to prevent any income from becoming exempt from taxation because of the provisions of this section if it would otherwise have been subject to taxation under the provisions of this chapter.
7. A taxpayer filing a return under this section is entitled to the credit provided under section 57-38-01.20.
8. A taxpayer filing a return under this section is entitled to the exemptions or credits provided under sections 40-63-04, 40-63-06, and 40-63-07.
9.
  - a. A taxpayer is entitled to a credit against the tax imposed by this section for any unused federal credit for prior year minimum tax. "Unused federal credit for prior year minimum tax" means the amount of the federal credit for prior year minimum tax attributable to federal alternative minimum tax included in the taxpayer's federal income tax liability for purposes of this section for taxable years beginning before January 1, 2001, reduced by the total amount of the federal credit for prior year minimum tax claimed on the taxpayer's federal income tax return for all taxable years beginning after December 31, 2000.
  - b. The credit under this subsection is equal to fourteen percent of the portion of the unused federal credit for prior year minimum tax claimed on the taxpayer's federal income tax return and may not exceed the taxpayer's tax liability under this section for the taxable year. For a nonresident taxpayer, the credit determined under this subsection must be multiplied by the percentage that the nonresident taxpayer's North Dakota adjusted gross income is of the nonresident's federal adjusted gross income.
  - c. The credit under this subsection is not allowed for taxable years beginning after December 31, 2004.
10.
  - a. If an individual taxpayer engaged in a farming business elects to average farm income under section 1301 of the Internal Revenue Code [26 U.S.C. 1301], the taxpayer may elect to compute tax under this subsection. If an election to compute tax under this subsection is made, the tax imposed by subsection 1 for the taxable year must be equal to the sum of the following:
    - (1) The tax computed under subsection 1 on North Dakota taxable income reduced by elected farm income.
    - (2) The increase in tax imposed by subsection 1 which would result if North Dakota taxable income for each of the three prior taxable years were increased by an amount equal to one-third of the elected farm income. However, if other provisions of this chapter other than this section were used to compute the tax for any of the three prior years, the same provisions in effect for that prior tax year must be used to compute the increase in tax under this paragraph. For purposes of applying this paragraph to taxable years

beginning before January 1, 2001, the increase in tax must be determined by recomputing the tax in the manner prescribed by the tax commissioner.

- b. For purposes of this subsection, "elected farm income" means that portion of North Dakota taxable income for the taxable year which is elected farm income as defined in section 1301 of the Internal Revenue Code of 1986 [26 U.S.C. 1301], as amended, reduced by the portion of an exclusion claimed under subdivision d of subsection 2 that is attributable to a net long-term capital gain included in elected farm income.
  - c. The reduction in North Dakota taxable income under this subsection must be taken into account for purposes of making an election under this subsection for any subsequent taxable year.
  - d. The tax commissioner may prescribe rules, procedures, or guidelines necessary to administer this subsection.
11. The tax commissioner may prescribe tax tables, to be used in computing the tax according to subsection 1, if the amounts of the tax tables are based on the tax rates set forth in subsection 1. If prescribed by the tax commissioner, the tables must be followed by every individual, estate, or trust determining a tax under this section.
  12. An individual, estate, or trust is entitled to a credit against the tax determined under this section as calculated under section 57-38.6-03.
  13. A taxpayer filing a return under this section is entitled to the credit provided under section 57-38.5-03.
  14. An individual taxpayer filing a return under this section is entitled to the credit provided under section 57-38-01.21.
  15. A taxpayer filing a return under this section is entitled to the credits provided under sections 57-38-01.22 and 57-38-01.23.
  16. A taxpayer filing a return under this section is entitled to the credits provided under section 42 of this Act and sections 57-38-01.24, 57-38-01.25, and 57-38-30.5.

<sup>14</sup> **SECTION 47. AMENDMENT.** Section 57-38-30.5 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30.5. Corporate income tax credit for research and experimental expenditures.** ~~Any corporation~~ A taxpayer is allowed a credit against the tax imposed under this chapter for the taxable year equal to eight percent of the first one and one-half million dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to four percent of all qualified research expenses for the taxable year more than one and

<sup>14</sup> Section 57-38-30.5 was also amended by section 2 of House Bill No. 1412, chapter 523.

one-half million dollars in excess of the base period research expenses section 57-38-29, 57-38-30, or 57-38-30.3 for conducting qualified research in this state.

1. The amount of the credit for taxpayers that earned or claimed a credit under this section in taxable years beginning before January 1, 2007, is calculated as follows:
  - a. For the first taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to seven and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - b. For the second taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eleven percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - c. For the third taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to fourteen and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - d. For the fourth through the tenth taxable years beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eighteen percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - e. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - f. The maximum annual credit a taxpayer may obtain under this section is two million dollars. Any credit amount earned in the taxable year in excess of two million dollars may not be carried back or forward as provided in subsection 7.
2. For taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which

begin conducting qualified research in North Dakota in any of the first four taxable years beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to twenty percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.

- a. This rate applies through the tenth taxable year beginning after December 31, 2006.
  - b. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
3. For taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any taxable year following the fourth taxable year beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
4. For purposes of this section:
- a. "Base period research expenses" means base period research expenses as defined in section 41(c) of the Internal Revenue Code [26 U.S.C. 41(c)], except it does not include research conducted outside the state of North Dakota.
  - b. "Director" means the director of the department of commerce division of economic development and finance.
  - c. "Primary sector business" means a qualified business that through the employment of knowledge or labor adds value to a product, process, or service.
  - d. "Qualified research" means qualified research as defined in section 41(d) of the Internal Revenue Code [26 U.S.C. 41(d)], except it does not include research conducted outside the state of North Dakota.
  - e. "Qualified research and development company" means a taxpayer that is a primary sector business with annual gross revenues of less than seven hundred fifty thousand dollars and which has not conducted new research and development in North Dakota.

- f. "Qualified research expenses" means qualified research expenses as defined in section 41(b) of the Internal Revenue Code [26 U.S.C. 41(b)], except it does not include expenses incurred for basic research conducted outside the state of North Dakota.
- ~~2.~~ 5. The credit allowed under this section for the taxable year may not exceed the liability for tax under this chapter.
- ~~3.~~ 6. In the case of a ~~corporation which taxpayer~~ that is a partner in a partnership or a member in a limited liability company, the credit allowed for the taxable year may not exceed an amount separately computed with respect to the ~~corporation's taxpayer's~~ interest in the trade, business, or entity equal to the amount of tax attributable to that portion of the ~~corporation's taxpayer's~~ taxable income which is allocable or apportionable to the ~~corporation's taxpayer's~~ interest in the trade, business, or entity.
4. 7. ¶ Except as provided in subsection 1, if the amount of the credit determined under this section for any taxable year exceeds the limitation under subsection 2 5, the excess may be used as a research credit carryback to each of the three preceding taxable years and a research credit carryover to each of the fifteen succeeding taxable years. The entire amount of the excess unused credit for the taxable year must be carried first to the earliest of the taxable years to which the credit may be carried and then to each successive year to which the credit may be carried. The and the amount of the unused credit which may be added under this subsection may not exceed the taxpayer's liability for tax less the research credit for the taxable year.
8. A taxpayer that is certified as a qualified research and development company by the director may elect to sell, transfer, or assign all or part of the unused tax credit earned under this section. The director shall certify whether a taxpayer that has requested to become a qualified research and development company meets the requirements of subsection 4. The director shall establish the necessary forms and procedures for certifying qualifying research and development companies. The director shall issue a certification letter to the taxpayer and the tax commissioner. A tax credit can be sold, transferred, or assigned subject to the following:
- a. A taxpayer's total credit assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years.
- b. If the taxpayer elects to assign or transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser jointly shall file with the tax commissioner a copy of the purchase agreement and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the amount of the credit being transferred, the gross proceeds received by the transferor, and the taxable year or years for which the credit may be claimed. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and waiver must be

filed within thirty days after the date the purchase agreement is fully executed.

- c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor, except the credit purchaser may not carry back the credit as otherwise provided in this section. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.
  - d. The original purchaser of the tax credit may not sell, assign, or otherwise transfer the credit purchased under this section.
  - e. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor, or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit these returns and assess or issue refunds, even though other time periods prescribed in these sections may have expired for the purchaser.
  - f. Gross proceeds received by the tax credit transferor must be assigned to North Dakota. The amount assigned under this subsection cannot be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.
  - g. The tax commissioner has four years after the date of the credit assignment to audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and if necessary assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.
  - h. The tax commissioner may adopt rules to permit verification of the validity and timeliness of the transferred tax credit.
- 5- 9. If a taxpayer acquires or disposes of the major portion of a trade or business or the major portion of a separate unit of a trade or business in a transaction with another taxpayer, the taxpayer's qualified research expenses and base period must be adjusted in the manner provided by section 41(f)(3) of the Internal Revenue Code [26 U.S.C. 41(f)(3)].
10. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all the corporations included



in the North Dakota consolidated return. This section does not apply to tax credits received or purchased under subsection 8.

11. An individual, estate, or trust that purchases a credit under this section is entitled to claim the credit against state income tax liability under section 57-38-29 or 57-38-30.3.

**SECTION 48. AMENDMENT.** Section 57-38.5-05 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.5-05. Seed capital investment tax credit limits.** The aggregate amount of seed capital investment tax credit allowed for investments under this chapter is limited to ~~two~~ three million five hundred thousand dollars for each calendar year. If investments in qualified businesses reported to the commissioner under section 57-38.5-07 exceed the limits on tax credits for investments imposed by this section, the credit must be allowed to taxpayers in the chronological order of their investments in qualified businesses as determined from the forms filed under section 57-38.5-07.

<sup>15</sup> **SECTION 49. AMENDMENT.** Section 57-38.6-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.6-01. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Agricultural commodity processing facility" means a:
  - a. A facility that through processing involving the employment of knowledge and labor adds value to an agricultural commodity capable of being raised in this state; or
  - b. A livestock feeding, handling, milking, or holding operation that uses as part of its operation a byproduct produced at a biofuels production facility.
2. "Biofuels production facility" means a corporation, limited liability company, partnership, individual, or association in this state:
  - a. Involved in production of diesel fuel containing at least five percent biodiesel meeting the specifications adopted by the American society for testing and materials;
  - b. Involved in the production of corn-based ethanol or cellulose-based ethanol; or
  - c. Involved in a soybean or canola crushing facility.
3. "Director" means the director of the department of commerce division of economic development and finance.

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<sup>15</sup> Section 57-38.6-01 was also amended by section 1 of Senate Bill No. 2081, chapter 527.

- 3- 4. "Qualified business" means a cooperative, corporation, partnership, or limited liability company that:
- Is incorporated or organized in this state after December 31, 2000, for the primary purpose of ~~processing and marketing being an agricultural commodities capable of being raised in this state commodity processing facility;~~
  - Has been certified by the securities commissioner to be in compliance under the securities laws of this state;
  - Has an agricultural commodity processing facility, or intends to locate one, in this state; and
  - Is among the first ten businesses that meets the requirements of this subsection, but not a business that was previously certified as a qualified business under chapter 57-38.5.
- 4- 5. "Taxpayer" means an individual, estate, trust, corporation, partnership, or limited liability company.

**SECTION 50. AMENDMENT.** Section 17 of chapter 151 of the 2005 Session Laws is amended and reenacted as follows:

**SECTION 17. NORTH DAKOTA BUSINESS CLIMATE INITIATIVE - LEGISLATIVE COUNCIL STUDY.** During the 2005-06 ~~and 2007-08 interim~~ interim, the legislative council shall study the state's business climate through a business climate initiative. The business climate initiative must include receipt of agency reports regarding economic development legislation introduced by the legislative council during previous legislative sessions, active participation in business climate focus groups across the state, and active participation in a biennial business ~~congresses congress~~. The focus groups shall discuss ways to enhance the state's business climate to stimulate job growth and enhance economic prosperity for employers and employees by encouraging the growth of existing businesses in the state, creating new businesses in the state, and encouraging expansion or relocation of businesses to this state. ~~Each~~ The business congress must receive a report on the activities of the focus group discussions, shall identify methods to enhance the state's business climate to stimulate job growth and enhance economic prosperity, shall identify methods to prepare the state for the high-growth and high-demand jobs of the future, and shall evaluate the impact of existing state economic development programs. The department of commerce shall organize the business climate focus groups and the business ~~congresses congress~~. Before ~~each~~ the business congress, which must be held before June 1, 2006, ~~and before June 1, 2008~~, the department shall hold a minimum of six focus group discussions, two of which specifically focus on local economic developers and four of which specifically focus on private business needs. The department shall consult with the legislative council in compiling focus group and business congress participant invitation lists and drafting and distributing invitations, establishing focus group and business congress dates and locations, and preparing agendas for focus groups and the business ~~congresses congress~~. The legislative council shall contract with a third party to provide professional services to plan, facilitate, report on, and coordinate followup for the focus groups and business ~~congresses congress~~. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth ~~and sixty-first~~ legislative ~~assemblies~~ assembly.

**SECTION 51. REPEAL.** Sections 57-38-71, 57-38-72, 57-38-73, and 57-38-74 of the North Dakota Century Code are repealed.

**SECTION 52. EFFECTIVE DATE.** Sections 42, 43, 44, 45, 46, 47, 48, 49, 50, and 51 of this Act are effective for taxable years beginning after December 31, 2006. Section 47 of this Act is effective for tax credits earned and assigned after December 31, 2006. However, rentals under a lease entered before January 1, 2007, and eligible for the exemption under section 57-38-73 when the lease was entered continue to be eligible for the exemption for taxable years after 2006 on the same terms and conditions for the duration of the lease.

**SECTION 53. EXPIRATION DATE.** Section 38 of this Act is effective through June 30, 2009, and after that date is ineffective.

**SECTION 54. EMERGENCY.** Section 34 of this Act is declared to be an emergency measure.

Approved May 1, 2007  
Filed May 2, 2007

**CHAPTER 19****HOUSE BILL NO. 1019**

(Appropriations Committee)  
(At the request of the Governor)

**BOARD FOR CAREER AND TECHNICAL EDUCATION**

AN ACT to provide an appropriation for defraying the expenses of the state board for career and technical education; to create and enact a new section to chapter 15-20.1 and three new sections to chapter 54-60 of the North Dakota Century Code, relating to an elementary student entrepreneurship grant program and a workforce enhancement grant program; to amend and reenact section 43-18-24 of the North Dakota Century Code, relating to a penalty for violating the state plumbing code; to provide a transfer; and to provide legislative intent.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the state board for career and technical education in section 3 of this Act as follows:

Salaries and wages	\$3,173,797
Operating expenses	1,024,858
Grants	21,500,116
Adult farm management	725,760
Workforce training	1,350,000
Postsecondary education vocational grants	<u>357,452</u>
Total all funds - Base level	\$28,131,983
Less estimated income - Base level	<u>11,291,197</u>
Total general fund - Base level	\$16,840,786

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the state board for career and technical education which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$403,035
Operating expenses	(38,252)
Grants	2,800,000
Adult farm management	(175,958)
Workforce training	<u>1,650,000</u>
Total all funds - Adjustments/enhancements	\$4,638,825
Less estimated income - Adjustments/enhancements	<u>(255,482)</u>
Total general fund - Adjustments/enhancements	\$4,894,307

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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 for career and technical education for the purpose of defraying the expenses of the various

divisions, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Salaries and wages	\$3,576,832
Operating expenses	986,606
Grants	24,300,116
Adult farm management	549,802
Workforce training	3,000,000
Postsecondary education vocational grants	<u>357,452</u>
Total all funds	\$32,770,808
Less estimated income	11,035,715
Total general fund appropriation	\$21,735,093

**SECTION 4. GRANTS - AREA CAREER AND TECHNOLOGY CENTERS.**

1. The state board for career and technical education shall use \$1,200,000 of the grants line item in section 3 of this Act, for the development, during the second year of the biennium, of at least two new area career and technology centers in areas of the state that currently are not served. The board shall award the grants on a competitive basis and shall require a twenty-five percent match by a recipient. In awarding the grants, the board shall give consideration to the number of students who will be served and to alignments of the proposed area career and technology centers with existing educational associations governed by joint powers agreements.
2. The board shall use \$800,000 of the grants line item in section 3 of this Act, to increase cost-share incentives for cooperative delivery efforts of career and technical education programs.

**SECTION 5. WORKFORCE TRAINING GRANTS.** The workforce training line item in section 3 of this Act includes the sum of \$1,650,000, or so much of the sum as may be necessary, for the purpose of providing supplemental workforce training grants to the institutions of higher education assigned primary responsibility for workforce training in this state, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 6.** A new section to chapter 15-20.1 of the North Dakota Century Code is created and enacted as follows:

**North Dakota elementary student entrepreneurship program.** There is created a North Dakota elementary student entrepreneurship program under the authority of the state board. The state board shall adopt policies to create a program of grants to support entrepreneurship education that is coordinated with classroom curriculum, standards, and activities encouraging and showcasing entrepreneurial activities at the elementary education level. The grants must be administered through local school districts and require matching funds of up to fifty percent of the curriculum and activity costs.

<sup>16</sup> **SECTION 7. AMENDMENT.** Section 43-18-24 of the North Dakota Century Code as amended in section 2 of Senate Bill No. 2060, as approved by the sixtieth legislative assembly, is amended and reenacted as follows:

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

**SECTION 8.** A new section to chapter 54-60 of the North Dakota Century Code is created and enacted as follows:

**Workforce enhancement council.** The workforce enhancement council consists of the private sector members of the workforce development council, the director of the department of career and technical education, and the director of the division of workforce development, who shall serve as chairman.

**SECTION 9.** A new section to chapter 54-60 of the North Dakota Century Code is created and enacted as follows:

**Workforce enhancement council - Grants.** The workforce enhancement council shall recommend to the commissioner the approval of grants to institutions of higher education assigned primary responsibility for workforce training in this state to be used to create or enhance training programs that address workforce needs of private sector companies. A grant made under this section may be used for curriculum development, equipment, recruitment of participants, and training and certification for instructors but may not be used to supplant funding for current operations. The department may distribute funds under this section after:

1. The division of workforce development certifies that a proposed training program meets a critical workforce shortage in a target industry or other high demand occupation and is expected to lead to employment in this state; and
2. The proposed recipient provides the department with detailed documentation of private sector participation, including the availability of one dollar of matching funds for each dollar of state funds.

**SECTION 10.** A new section to chapter 54-60 of the North Dakota Century Code is created and enacted as follows:

**Workforce enhancement fund - Continuing appropriation.** The workforce enhancement fund is a special fund in the state treasury. All funds in the workforce enhancement fund are appropriated to the department of commerce on a continuing basis for the purpose of implementing and administering sections 8 and 9 of this Act. Interest earned by the fund must be credited to the fund.

**SECTION 11. TRANSFER - APPROPRIATION.** The office of management and budget shall transfer \$2,000,000 from the general fund to the workforce

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<sup>16</sup> Section 43-18-24 was also amended by section 2 of Senate Bill No. 2060, chapter 369.

enhancement fund for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 12. LEGISLATIVE INTENT.** It is the intent of the legislative assembly that the state board for career and technical education use \$250,000, or so much of the sum as may be necessary, from the grants line item in section 3 of this Act, for the purpose of providing grants to support the North Dakota elementary student entrepreneurship program.

Approved May 2, 2007  
Filed May 3, 2007

**CHAPTER 20****HOUSE BILL NO. 1020**

(Appropriations Committee)  
(At the request of the Governor)

**EXTENSION SERVICE, CROPS INSTITUTE,  
TRANSPORTATION INSTITUTE, RESEARCH CENTERS,  
AND SEED FARM**

AN ACT to provide an appropriation for defraying the expenses of the extension service, northern crops institute, upper great plains transportation institute, main research center, branch research centers, and agronomy seed farm; to amend and reenact sections 4-41-02 and 24-02-03.3 of the North Dakota Century Code, relating to industrial hemp licenses and the central motor pool; to provide for transfer of funds; to provide legislative intent; to provide for a report to the sixty-first legislative assembly; to provide an exemption; and to declare an emergency.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the North Dakota state university extension service, the northern crops institute, the upper great plains transportation institute, the main research center, branch research centers, and agronomy seed farm in section 3 of this Act as follows:

## Subdivision 1.

## NORTH DAKOTA STATE UNIVERSITY EXTENSION SERVICE

Extension service	\$37,542,499
Soil conservation committee	<u>837,238</u>
Total all funds - Base level	\$38,379,737
Less estimated income - Base level	<u>23,021,591</u>
Total general fund - Base level	\$15,358,146

## Subdivision 2.

## NORTHERN CROPS INSTITUTE

Total all funds - Base level	\$1,902,683
Less estimated income - Base level	<u>991,922</u>
Total general fund - Base level	\$910,761

## Subdivision 3.

## UPPER GREAT PLAINS TRANSPORTATION INSTITUTE

Total all funds - Base level	\$16,452,937
Less estimated income - Base level	<u>15,290,033</u>
Total general fund - Base level	\$1,162,904



## Subdivision 4.

## MAIN RESEARCH CENTER

Total all funds - Base level	\$75,456,713
Less estimated income - Base level	<u>44,662,646</u>
Total general fund - Base level	\$30,794,067

## Subdivision 5.

## RESEARCH CENTERS

Dickinson research center	\$5,563,870
Central grasslands research center	2,335,297
Hettinger research center	1,809,657
Langdon research center	1,336,094
North central research center	3,930,540
Williston research center	2,271,878
Carrington research center	<u>4,258,340</u>
Total all funds - Base level	\$21,505,676
Less estimated income - Base level	<u>13,119,367</u>
Total general fund - Base level	\$8,386,309

## Subdivision 6.

## AGRONOMY SEED FARM

Agronomy seed farm	\$1,201,008
Total special funds - Base level	\$1,201,008
Total general fund - Section 1	\$56,612,187
Total special funds - Section 1	\$98,286,567
Total all funds - Section 1	\$154,898,754

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS**

**INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the North Dakota state university extension service, the northern crops institute, the upper great plains transportation institute, the main research center, branch research centers, and agronomy seed farm which are included in the appropriation in section 3 of this Act as follows:

## Subdivision 1.

## NORTH DAKOTA STATE UNIVERSITY EXTENSION SERVICE

Extension service	\$3,989,956
Soil conservation committee	<u>(99,438)</u>
Total all funds - Adjustments/enhancements	\$3,890,518
Less estimated income - Adjustments/enhancements	<u>844,033</u>
Total general fund - Adjustments/enhancements	\$3,046,485

## Subdivision 2.

## NORTHERN CROPS INSTITUTE

Total all funds - Adjustments/enhancements	\$720,428
Less estimated income - Adjustments/enhancements	<u>487,797</u>
Total general fund - Adjustments/enhancements	\$232,631

## Subdivision 3.

## UPPER GREAT PLAINS TRANSPORTATION INSTITUTE

Total all funds - Adjustments/enhancements	\$11,119,654
Less estimated income - Adjustments/enhancements	<u>11,072,603</u>
Total general fund - Adjustments/enhancements	\$47,051

## Subdivision 4.

## MAIN RESEARCH CENTER

Total all funds - Adjustments/enhancements	\$11,885,735
Less estimated income - Adjustments/enhancements	<u>(1,559,949)</u>
Total general fund - Adjustments/enhancements	\$13,445,684

## Subdivision 5.

## RESEARCH CENTERS

Dickinson research center	\$513,359
Central grasslands research center	(67,791)
Hettinger research center	631,555
Langdon research center	361,199
North central research center	(105,724)
Williston research center	862,491
Carrington research center	<u>1,319,750</u>
Total all funds - Adjustments/enhancements	\$3,514,839
Less estimated income - Adjustments/enhancements	<u>597,064</u>
Total general fund - Adjustments/enhancements	\$2,917,775

## Subdivision 6.

## AGRONOMY SEED FARM

Agronomy seed farm - Adjustments/enhancements	<u>\$29,338</u>
Total special funds - Adjustments/enhancements	\$29,338
Total general fund - Section 2	\$19,689,626
Total special funds - Section 2	\$11,470,886
Total all funds - Section 2	\$31,160,512

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the North Dakota state university extension service, the northern crops institute, the upper great plains transportation institute, the main research center, branch research centers, and agronomy seed farm for the purpose of defraying the expenses of those agencies, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

## Subdivision 1.

## NORTH DAKOTA STATE UNIVERSITY EXTENSION SERVICE

Extension service	\$41,532,455
Soil conservation committee	<u>737,800</u>
Total all funds	\$42,270,255
Less estimated income	<u>23,865,624</u>
Total general fund appropriation	\$18,404,631

## Subdivision 2.

## NORTHERN CROPS INSTITUTE

Total all funds	\$2,623,111
Less estimated income	<u>1,479,719</u>
Total general fund appropriation	\$1,143,392

## Subdivision 3.

## UPPER GREAT PLAINS TRANSPORTATION INSTITUTE

Total all funds	\$27,572,591
Less estimated income	<u>26,362,636</u>
Total general fund appropriation	\$1,209,955

## Subdivision 4.

## MAIN RESEARCH CENTER

Total all funds	\$87,342,448
Less estimated income	<u>43,102,697</u>
Total general fund appropriation	\$44,239,751

## Subdivision 5.

## RESEARCH CENTERS

Dickinson research center	\$6,077,229
Central grasslands research center	2,267,506
Hettinger research center	2,441,212
Langdon research center	1,697,293
North central research center	3,824,816
Williston research center	3,134,369
Carrington research center	5,578,090
Total all funds	\$25,020,515
Less estimated income	<u>13,716,431</u>
Total general fund appropriation	\$11,304,084

## Subdivision 6.

## AGRONOMY SEED FARM

Agronomy seed farm	\$1,230,346
Total special funds appropriation	\$1,230,346
Grand total general fund appropriation - H.B. 1020	\$76,301,813
Grand total special funds appropriation - H.B. 1020	\$109,757,453
Grand total all funds appropriation - H.B. 1020	\$186,059,266

**SECTION 4. ADDITIONAL INCOME - APPROPRIATION.** In addition to the amount included in the grand total special funds appropriation line item in section 3 of this Act, any other income, including funds from federal acts, private grants, gifts, and donations, or from other sources received by the North Dakota state university extension service, the northern crops institute, the upper great plains transportation institute, the main research center, branch research centers, and agronomy seed farm, except as otherwise provided by law, is appropriated for the purpose designated in the act, grant, gift, or donation, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 5. TRANSFER AUTHORITY.** Upon approval of the state board of agricultural research and education and appropriate branch research center

directors, the director of the main research center may transfer appropriation authority within subdivisions 1, 2, 4, and 5 of section 3 of this Act and shall notify the office of management and budget within ten days following the transfer.

**SECTION 6. FULL-TIME EQUIVALENT POSITION ADJUSTMENTS.** The board of higher education is authorized to adjust or increase full-time equivalent positions as needed for the entities in section 3 of this Act, subject to availability of funds. The board shall report any adjustments to the office of management and budget prior to the submission of the 2009-11 budget request.

<sup>17</sup> **SECTION 7. AMENDMENT.** Section 4-41-02 of the North Dakota Century Code is amended and reenacted as follows:

**4-41-02. Industrial hemp - Licensure - Reporting requirements - Continuing appropriation.**

1. Any person desiring to grow industrial hemp for commercial purposes shall apply to the agriculture commissioner for a license on a form prescribed by the commissioner. The application for a license must include the name and address of the applicant and the legal description of the land area to be used to produce industrial hemp. Except for employees of the agricultural experiment station or the North Dakota state university extension service involved in research and extension related activities, the commissioner shall require each applicant for initial licensure to submit to a statewide and nationwide criminal history check. The nationwide criminal history check must be conducted in the manner provided in section 12-60-24. All costs associated with the background check are the responsibility of the applicant. Criminal history records provided to the commissioner under this section are confidential. The commissioner may use the records only in determining an applicant's eligibility for licensure. Any person with a prior criminal conviction is not eligible for licensure. If the applicant has completed the application process to the satisfaction of the commissioner, the commissioner shall issue the license, which is valid for a period of one year. Any person licensed under this section is presumed to be growing industrial hemp for commercial purposes. A license required by this section is not conditioned on or subject to review or approval by the United States drug enforcement agency.
2. Each licensee must file with the commissioner documentation indicating that the seeds planted were of a type and variety certified to have no more than three-tenths of one percent tetrahydrocannabinol and a copy of any contract to grow industrial hemp. Each licensee shall notify the commissioner of the sale or distribution of any industrial hemp grown by the licensee, and the names of the persons to whom the hemp was sold or distributed.
3. The commissioner shall adopt rules to allow the industrial hemp to be tested during growth for tetrahydrocannabinol levels and to allow for supervision of the industrial hemp during its growth and harvest. To

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<sup>17</sup> Section 4-41-02 was also amended by section 1 of Senate Bill No. 2099, chapter 69.

provide sufficient funds to pay costs associated with monitoring and testing industrial hemp in the state, the commissioner shall assess each applicant a fee of five dollars per acre. The minimum fee assessed must be one hundred fifty dollars per applicant. Collections from this fee must be deposited in the attorney general's operating fund and are hereby appropriated to the attorney general to be used to enforce this chapter.

**SECTION 8. AMENDMENT.** Section 24-02-03.3 of the North Dakota Century Code is amended and reenacted as follows:

**24-02-03.3. Central management system for all state-owned licensed motor vehicles.**

1. The director shall establish within the department a central vehicle management system to regulate the operation, maintenance, and management of all motor vehicles owned or leased by the state subject to registration under chapters 39-04 and 39-05. Upon the request of a state agency and an agreement between the agency and director for the use of the motor vehicle-related equipment, the director may purchase or lease motor vehicle-related equipment and include that equipment within the system. The director shall provide a uniform method of documenting the use and cost of operation of motor vehicles and motor vehicle-related equipment in the system. The director shall advise the director of the office of management and budget as to the need to acquire or dispose of system motor vehicles. The specifications for highway patrol vehicles to be acquired may be set by the highway patrol superintendent. Every state agency, institution, department, board, bureau, and commission unless exempted by the director must use the system. At the request of the director of the North Dakota agricultural experiment station, certain vehicles used in farming operations at the agronomy seed farm and branch research centers shall be exempt from the requirements of this section. However, an agency, institution, department, board, bureau, or commission may authorize the use of an employee's personal motor vehicle pursuant to subsection 4 of section 54-06-09.
2. The director may enter into an agreement with a state employee who has a disability requiring a specially-equipped vehicle to pay a mileage rate greater than the rate established in section 54-06-09 for the employee's use of the employee's specially-equipped motor vehicle while conducting state business. The rate must be based on the rate provided in section 54-06-09, increased by the actual cost per mile caused by the special equipment, and may not exceed the cost associated with the special equipment expressed as the new value plus the depreciated fair market value in eight years divided by two, divided by twenty thousand miles.
3. Each entity required to use the system shall submit records of the operation of each vehicle as directed by the director.

**SECTION 9. UNEXPENDED GENERAL FUND - EXCESS INCOME.** Any unexpended general fund appropriation authority to and any excess income received by entities listed in section 3 of this Act are not subject to the provisions of section 54-44.1-11, and any unexpended funds from these appropriations or revenues are

available and may be expended by those entities, during the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 10. LEGISLATIVE INTENT - BEEF RESEARCH FACILITY.** It is the intent of the sixtieth legislative assembly that before proceeding with a beef research facility, a documented agreement as to the location of the facility must be provided to the main research center from applicable city and county government officials.

**SECTION 11. LEGISLATIVE INTENT - OPERATING POOL FUNDING.** It is the intent of the sixtieth legislative assembly that the appropriation from the permanent oil tax trust fund as provided in subdivision 4 of section 3 of this Act is to be available only for providing funding for operations of the Dickinson research center and the amount provided is to be limited to the lesser of \$750,000 or the amount actual oil revenues are less than budgeted for the research center for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 12. LEGISLATIVE INTENT - USE OF LIVESTOCK FACILITIES.** It is the intent of the sixtieth legislative assembly that the agricultural experiment station consider options to ensure that the use of the livestock facilities at Dickinson, Hettinger, Carrington, and Streeter are being maximized.

**SECTION 13. NATIONAL CATTLEMEN'S BEEF ASSOCIATION FUNDING - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The agricultural experiment station shall provide a report to the sixty-first legislative assembly regarding the funding received during the biennium beginning July 1, 2007, and ending June 30, 2009, from the national cattlemen's beef association.

**SECTION 14. EXEMPTION.** The amounts appropriated for the research greenhouse complex project, as contained in subdivision 4 of section 3 of chapter 48 of the 2005 Session Laws and for the north central research center laboratory and greenhouse project, as contained in subdivision 5 of section 3 of chapter 48 of the 2005 Session Laws are not subject to the provisions of section 54-44.1-11, and any unexpended funds from these appropriations or related revenues are available and may be expended during the biennium beginning July 1, 2007, and ending June 30, 2009. The main research center may use any funding available within the total appropriation authority for the main research center greenhouse project to begin construction of the greenhouses.

**SECTION 15. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The total appropriation in section 3 of this Act includes \$8,732,750 from the general fund and \$750,000 from the permanent oil tax trust fund for the one-time funding items identified in this section. This amount is not a part of the agency's base budget to be used in preparing the 2009-11 executive budget. The agricultural experiment station shall report to the appropriations committees of the sixty-first legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2007, and ending June 30, 2009.

North central research center laboratory and greenhouse project	\$400,000
North central research center equipment storage facility	300,000
Main research center greenhouse project	7,000,000
Deferred maintenance pool	100,000
Carrington, Hettinger, and north central research centers office addition projects	907,750
Operating pool from permanent oil tax trust fund	750,000
Extraordinary repairs at northern crops institute	<u>25,000</u>
Total	\$9,482,750

**SECTION 16. EMERGENCY.** The appropriation for capital projects of \$5,500,000 in subdivision 3 of section 3, \$7,907,750 in subdivision 4 of section 3, and \$1,101,000 in subdivision 5 of section 3 and section 7 of this Act are declared to be an emergency measure.

Approved April 27, 2007  
Filed April 30, 2007

**CHAPTER 21****HOUSE BILL NO. 1021**(Appropriations Committee)  
(At the request of the Governor)**INFORMATION TECHNOLOGY DEPARTMENT**

AN ACT to provide an appropriation for defraying the expenses of the information technology department; to create and enact a new section to chapter 15.1-02, a new section to chapter 23-01, a new subsection to section 54-35-15.2, and a new section to chapter 54-59 of the North Dakota Century Code, relating to the superintendent of public instruction, creation of a health information technology steering committee, the powers and duties of the information technology committee, and the borrowing authority of the information technology department; and to declare an emergency.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the information technology department in section 3 of this Act as follows:

Salaries and wages	\$29,327,174
Operating expenses	48,908,146
Capital assets	10,361,163
Division of independent study	6,016,779
Educational technology council	886,597
EduTech	2,652,348
Wide area network	7,542,950
Geographic information system	686,980
Criminal justice information sharing	<u>2,525,090</u>
Total all funds - Base level	\$108,907,227
Less estimated income - Base level	<u>98,934,390</u>
Total general fund - Base level	\$9,972,837

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the information technology department which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$8,396,245
Operating expenses	8,154,766
Capital assets	1,784,087
Division of independent study	449,226
Educational technology council	249,977
EduTech	70,000
Wide area network	(3,476,024)
Geographic information system	111,333
Criminal justice information sharing	(172,642)
Statewide longitudinal data system	<u>228,116</u>
Total all funds - Adjustments/enhancements	\$15,795,084



Less estimated income - Adjustments/enhancements	14,105,767
Total general fund - Adjustments/enhancements	<u>\$1,689,317</u>

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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 information technology department for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Salaries and wages	\$37,723,419
Operating expenses	57,062,912
Capital assets	12,145,250
Division of independent study	6,466,005
Educational technology council	1,136,574
EduTech	2,722,348
Wide area network	4,066,926
Geographic information system	798,313
Criminal justice information sharing	2,352,448
Statewide longitudinal data system	<u>228,116</u>
Total all funds	\$124,702,311
Less estimated income	<u>113,040,157</u>
Total general fund appropriation	<u>\$11,662,154</u>

**SECTION 4. TRANSFERS.** Notwithstanding section 54-16-04, the director of the office of management and budget shall make transfers of funds between the salaries and wages, operating expenses, and capital assets line items in section 3 of this Act for the information technology department as may be requested by the chief information officer as determined necessary for the development and implementation of information technology projects.

**SECTION 5. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The total general fund appropriation line item in section 3 of this Act includes \$1,611,490 for the one-time funding items identified in this section. This amount is not a part of the agency's base budget to be used in preparing the 2009-11 executive budget. The information technology department shall report to the appropriations committees of the sixty-first legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2007, and ending June 30, 2009.

Criminal justice information sharing initiative	\$1,151,490
Geographic information system data acquisition	100,000
Kindergarten through grade 12 video grants	190,000
Online North Dakota studies resources and curriculum	<u>170,000</u>
Total	<u>\$1,611,490</u>

**SECTION 6. LEGISLATIVE INTENT - FTE POSITIONS.** It is the intent of the sixtieth legislative assembly that the twenty-eight new full-time equivalent positions identified as project-specific and funded in section 3 of this Act may be filled while the project is being developed and funding is available for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 7. VIDEO SUPPORT SERVICES - NORTH DAKOTA UNIVERSITY SYSTEM ASSISTANCE.** Section 3 of this Act includes the sum of \$300,110 to be provided by the North Dakota university system for the cost of two

full-time equivalent positions and related operating expenses to provide support for video services in school districts.

**SECTION 8.** A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

**Statewide longitudinal data system committee - Report to interim committee.**

1. The statewide longitudinal data system committee consists of the chancellor of the board of higher education or chancellor's designee, the superintendent of public instruction or superintendent of public instruction's designee, the chief information officer or chief information officer's designee, the director of the department of career and technical education or the director's designee, the director of job service North Dakota or the director's designee, the director of the department of commerce or the director's designee, the director of the department of human services or the director's designee, and one person appointed by the governor. The governor shall appoint the chair of the committee. The committee may appoint advisory committees that would serve in an advisory capacity to the committee.
2. The committee shall plan and propose a longitudinal data system which:
  - a. Provides for dissemination of management information to stakeholders and partners of state education, training, and employment systems; and
  - b. Uses data from educational and workforce systems as central sources of longitudinal data.
3. The committee shall recommend policies, procedures, and guidelines to protect the privacy and security of personal information as provided by state and federal law.
4. The committee shall provide a report to the information technology committee, interim committee on education issues, and interim committee on economic development prior to the sixty-first legislative assembly on the status of the statewide longitudinal data system plan. The report shall include recommendations for further development, cost proposals, proposals for legislation, and data sharing governance, including recommendations concerning the long-term role and administration of the followup information in North Dakota for education and training program.

**SECTION 9.** A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

**North Dakota health information technology steering committee.** The North Dakota health information technology steering committee consists of the state health officer or the state health officer's designee, the governor or the governor's designee, the executive director of the department of human services or the executive director's designee, individuals appointed by the governor to represent state government interests, and individuals appointed by the state health officer to represent health information technology stakeholders.

<sup>18</sup> **SECTION 10.** A new subsection to section 54-35-15.2 of the North Dakota Century Code is created and enacted as follows:

Receive and review information, including a project startup report summarizing the project description, project objectives, business need or problem, cost-benefit analysis, and project risks and a project closeout report summarizing the project objectives achieved, project budget and schedule variances, and lessons learned, from the affected legislative or judicial branch agency regarding any information technology project of the legislative or judicial branch with a total cost of two hundred fifty thousand dollars or more.

**SECTION 11.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

**Borrowing authority - E-rate funding - Emergency commission approval.**

Notwithstanding the limitations provided in section 54-59-05 and upon the approval of the emergency commission, the department may borrow from the Bank of North Dakota an amount necessary to pay telecommunications costs for connecting approved schools and libraries in the event e-rate funding is not received by the department from the schools and libraries division of the universal service administrative company. In addition to the principal repayment, the Bank of North Dakota is entitled to receive interest on the loan at a rate equal to other state agency borrowings. If at the end of the biennium a balance exists on any loan obtained pursuant to this section and funds are not anticipated to be available from the schools and libraries division of the universal service administrative company to repay the loan, the department shall request a deficiency appropriation from the legislative assembly to repay to loan.

**SECTION 12. EMERGENCY.** Funding of \$2,279,136 in the salaries and wages line item, \$10,291,628 in the operating expenses line item, and \$993,575 in the capital assets line item in section 3 of this Act relating to the department of human services' medicaid management information system rewrite project is declared to be an emergency measure.

Approved May 2, 2007  
Filed May 3, 2007

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<sup>18</sup> Section 54-35-15.2 was also amended by section 3 of House Bill No. 1461, chapter 154, section 2 of Senate Bill No. 2037, chapter 491, and section 1 of Senate Bill No. 2038, chapter 490.

**CHAPTER 22****HOUSE BILL NO. 1022**

(Appropriations Committee)  
(At the request of the Governor)

**SEED DEPARTMENT**

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

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the state seed department in section 3 of this Act as follows:

Total seed department fund - Base level	\$5,933,391
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**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the state seed department which are included in the appropriation in section 3 of this Act as follows:

Total seed department fund - Adjustments/enhancements	\$236,111
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**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from the special funds derived from income, to the state seed department for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Total special funds appropriation	\$6,169,502
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Approved March 7, 2007  
Filed March 8, 2007

**CHAPTER 23****HOUSE BILL NO. 1023**

(Appropriations Committee)  
(At the request of the Governor)

**COMMISSION ON LEGAL COUNSEL FOR INDIGENTS**

AN ACT to provide an appropriation for defraying the expenses of the commission on legal counsel for indigents.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amount identified in this section represents the base level funding component appropriated to the commission on legal counsel for indigents in section 3 of this Act as follows:

Commission on legal counsel for indigents	\$9,780,569
Less estimated income - Base level	<u>1,220,000</u>
Total general fund - Base level	\$8,560,569

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amount identified in this section represents the funding adjustments or enhancements to the base funding level for the commission on legal counsel for indigents which are included in the appropriation in section 3 of this Act as follows:

Commission on legal counsel for indigents	\$1,432,947
Less estimated income - Adjustments/enhancements	<u>480,705</u>
Total general fund - Adjustments/enhancements	\$952,242

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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 commission on legal counsel for indigents for the purpose of defraying the expenses of the commission on legal counsel for indigents, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Commission on legal counsel for indigents	\$11,213,516
Less estimated income	<u>1,700,705</u>
Total general fund appropriation	\$9,512,811

Approved March 13, 2007  
Filed March 14, 2007

**CHAPTER 24****HOUSE BILL NO. 1024**

(Appropriations Committee)  
(At the request of the Governor)

**RACING COMMISSION**

AN ACT to provide an appropriation for defraying the expenses of the racing commission.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the racing commission in section 3 of this Act as follows:

Racing commission	\$367,145
Less estimated income - Base level	<u>249,666</u>
Total general fund - Base level	\$117,479

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the racing commission which are included in the appropriation in section 3 of this Act as follows:

Racing commission	\$40,419
Less estimated income - Adjustments/enhancements	<u>37,258</u>
Total general fund - Adjustments/enhancements	\$3,161

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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 racing commission for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Racing commission	\$407,564
Less estimated income	<u>286,924</u>
Total general fund appropriation	\$120,640

Approved March 23, 2007  
Filed March 23, 2007

**CHAPTER 25****HOUSE BILL NO. 1246**

(Representatives R. Kelsch, Kroeber, Price)  
(Senators Flakoll, Grindberg, Mathern)

**DENTAL MEDICAL ASSISTANCE**

AN ACT to provide for a report to the legislative council relating to dental medical assistance reimbursement; and to provide an appropriation.

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

**SECTION 1. DEPARTMENT OF HUMAN SERVICES REPORT ON MEDICAL ASSISTANCE DENTAL SERVICES - REPORT TO LEGISLATIVE COUNCIL.** Before August 1, 2008, the department of human services shall report to the legislative council on the status of medical assistance recipients' access to dental services.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$160,000, or so much of the sum as may be necessary, and from special funds derived from federal funds, the sum of \$284,198, or so much of the sum as may be necessary, to the department of human services for the purpose of increasing funding of children's dental services through the medical assistance program, for the biennium beginning July 1, 2007, and ending June 30, 2009.

Approved May 1, 2007  
Filed May 2, 2007

**CHAPTER 26****HOUSE BILL NO. 1429**

(Appropriations Committee)

**BUDGET STABILIZATION FUND TRANSFER AND  
APPROPRIATION**

AN ACT to provide a transfer and appropriation from the general fund; to amend and reenact section 54-27.2-01 of the North Dakota Century Code, relating to the budget stabilization fund; and to provide an effective date.

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

**SECTION 1. TRANSFER - APPROPRIATION.** Notwithstanding the provisions of sections 54-27.2-01 and 54-27.2-02, there is appropriated out of any moneys in the general fund the sum of \$100,527,369 which the state treasurer shall transfer to the budget stabilization fund on July 1, 2007, based on the end-of-biennium balance in the general fund on June 30, 2007. This transfer will provide for a total of \$200,000,000 in the budget stabilization fund for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 2. AMENDMENT.** Section 54-27.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-27.2-01. Budget stabilization fund.** The budget stabilization fund is a special fund in the state treasury. The state investment board shall supervise investment of the budget stabilization fund in accordance with chapter 21-10. Any interest or other budget stabilization fund earnings must be deposited in the fund. Any amounts provided by law for deposit in the fund and any interest or earnings of the fund which would bring the balance in the fund to an amount greater than five ten percent of the current biennial state general fund budget, as finally approved by the most recently adjourned special or regular session of the legislative assembly, may not be deposited or retained in the fund but must be deposited instead in the state general fund.

**SECTION 3. EFFECTIVE DATE.** Section 2 of this Act becomes effective July 1, 2009.

Approved April 12, 2007  
Filed April 13, 2007



**CHAPTER 27****HOUSE BILL NO. 1522**

(Representatives Berg, Boucher)

(Senators Stenehjem, O'Connell)

(Approved by the Delayed Bills Committee)

**OFFICE OF MANAGEMENT AND BUDGET**

AN ACT to provide an appropriation for defraying the expenses of the various divisions under the supervision of the director of the office of management and budget; to provide an exemption; and to provide legislative intent.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the office of management and budget in section 3 of this Act as follows:

Salaries and wages	\$13,595,086
Operating expenses	11,341,106
Capital assets	3,999,000
Grants	389,000
Prairie public broadcasting	1,337,138
Procurement assistance study	150,000
Centers of excellence	<u>36,000,000</u>
Total all funds - Base level	\$66,811,330
Less estimated income - Base level	<u>46,655,319</u>
Total general fund - Base level	\$20,156,011

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the office of management and budget which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$1,625,058
Operating expenses	151,030
Capital assets	646,019
Grants	(335,000)
Prairie public broadcasting	(1,337,138)
Procurement assistance study	(150,000)
Centers of excellence	<u>(36,000,000)</u>
Total all funds - Adjustments/enhancements	(\$35,400,031)
Less estimated income - Adjustments/enhancements	<u>(38,224,959)</u>
Total general fund - Adjustments/enhancements	\$2,824,928

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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 office of management and budget for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Salaries and wages	\$15,220,144
Operating expenses	11,492,136
Capital assets	4,645,019
Grants	54,000
Total all funds	\$31,411,299
Less estimated income	8,430,360
Total general fund appropriation	\$22,980,939

**SECTION 4. EXEMPTION.** The amount appropriated for the fiscal management division, as contained in section 3 of chapter 15 of the 2005 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available for continued development and operating costs of the accounting, management, and payroll systems, during the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 5. CAPITOL BUILDING FUND.** The amount of \$750,000, or so much of the sum as may be necessary, included in the estimated income line item in section 3 of this Act, is to be spent by the facility management division from the capitol building fund during the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 6. INTENT.** Within the authority included in section 3 of this Act are the following grants and special items:

Boys and girls clubwork	\$53,000
State contingencies	\$500,000
State memberships and related expenses	\$581,000
Unemployment insurance	\$1,500,000
Capitol grounds planning commission	\$25,000

**SECTION 7. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The total general fund appropriation line item in section 3 of this Act includes \$3,000,000 for the one-time funding item identified in this section. This amount is not a part of the agency's base budget to be used in preparing the 2009-11 executive budget. The office of management and budget shall report to the appropriations committees of the sixty-first legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2007, and ending June 30, 2009.

Deferred maintenance	\$3,000,000
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Approved May 1, 2007  
Filed May 2, 2007

**CHAPTER 28****SENATE BILL NO. 2001**

(Appropriations Committee)  
(At the request of the Governor)

**GOVERNOR**

AN ACT to provide an appropriation for defraying the expenses of the office of the governor; to provide an appropriation to the department of commerce; and to amend and reenact sections 54-07-04, 54-08-03, 54-62-01, and 54-62-03 of the North Dakota Century Code, relating to the salaries of the governor and lieutenant governor and the office of faith-based and community initiatives.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the office of the governor in section 3 of this Act as follows:

Salaries and wages	\$2,284,968
Operating expenses	352,369
Grants	2,500,000
Contingencies	10,000
Roughrider awards	<u>10,800</u>
Total all funds - Base level	\$5,158,137
Less estimated income - Base level	<u>2,560,000</u>
Total general fund - Base level	\$2,598,137

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the office of the governor which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$307,461
Operating expenses	74,418
Grants	(2,500,000)
Presidential electors	500
Governor's transition in	15,000
Governor's transition out	<u>50,000</u>
Total all funds - Adjustments/enhancements	(\$2,052,621)
Less estimated income - Adjustments/enhancements	<u>(2,560,000)</u>
Total general fund - Adjustments/enhancements	\$507,379

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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 office of the governor for the purpose of defraying the expenses of the office of the governor, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Salaries and wages	\$2,592,429
Operating expenses	426,787
Contingencies	10,000

Roughrider awards	10,800
Presidential electors	500
Transition in	15,000
Transition out	50,000
Total general fund appropriation	\$3,105,516

**SECTION 4. APPROPRIATION - AUTHORIZATION - GOVERNOR'S OFFICE.** In addition to the amounts appropriated to the governor's office in section 3 of this Act, there is appropriated any additional income from federal or other funds which may be become available to the agency for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 5. APPROPRIATION - DEPARTMENT OF COMMERCE.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$11,000, or so much of the sum as may be necessary, to the department of commerce for the purpose of defraying expenses of the office of faith-based and community initiatives, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 6. AMENDMENT.** Section 54-07-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-07-04. Salary of governor.** The annual salary of the governor is ~~eighty-eight~~ ninety-six thousand ~~nine~~ one hundred ~~twenty-six~~ eighty-three dollars through June 30, ~~2006~~ 2008, and ~~ninety-two~~ one hundred thousand ~~four~~ hundred ~~eighty-three~~ thirty-one dollars thereafter.

**SECTION 7. AMENDMENT.** Section 54-08-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-08-03. Salary of lieutenant governor.** The annual salary of the lieutenant governor is ~~sixty-nine~~ seventy-four thousand ~~thirty-five~~ six hundred ~~sixty-eight~~ dollars through June 30, ~~2006~~ 2008, and ~~seventy-one~~ seventy-seven thousand ~~seven~~ six hundred ~~ninety-seven~~ fifty-five dollars thereafter.

**SECTION 8. AMENDMENT.** Section 54-62-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-62-01. Office of faith-based and community initiatives established.** The office of faith-based and community initiatives is established within the ~~governor's office~~ department of commerce. The office of faith-based and community initiatives has lead responsibility to establish policies, priorities, and objectives for the state's comprehensive effort to enlist, equip, enable, empower, and expand the work of faith-based and community organizations to the extent permitted by law. The ~~governor~~ commissioner of the department of commerce shall designate a member of the ~~governor's~~ department of commerce staff to serve as director of the office of faith-based and community initiatives. ~~The governor may designate other members of the governor's staff~~ department of commerce shall provide other staff services to assist the director.

**SECTION 9. AMENDMENT.** Section 54-62-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-62-03. Advisory commission.** The advisory commission on faith-based and community initiatives is composed of seven members to include the following: the executive director of the department of human services or the director's

designee; the director of the department of corrections and rehabilitation or the director's designee; two members of the legislative assembly, one of whom must be selected by the members of the legislative council representing the majority faction and one of whom must be selected by the members of the legislative council representing the minority faction; and three public members appointed by the governor, one of whom must represent a minority population. The term of office for the public members is three years. Of the first public members appointed, one must be appointed for a term of one year, one must be appointed for a term of two years, and one must be appointed for a term of three years. No public member may be appointed to more than two consecutive terms. A chairman of the commission must be chosen annually from the membership of the commission by a majority of its members at the first meeting of the advisory commission each year. The advisory commission shall advise the director of the office of faith-based and community initiatives ~~and the governor~~ in the establishment of policy regarding matters affecting the faith-based and community organizations, including making recommendations ~~to the governor~~ concerning the future of existing state programs and initiatives. The advisory commission on faith-based and community initiatives shall report periodically to the governor and provide the governor with information and recommendations for the governor's consideration. The members of the advisory commission are entitled to mileage and expenses as provided by law for state officers and employees.

Approved April 9, 2007

Filed April 10, 2007

**CHAPTER 29****SENATE BILL NO. 2002**(Appropriations Committee)  
(At the request of the Governor)**SECRETARY OF STATE**

AN ACT to provide an appropriation for defraying the expenses of the office of the secretary of state and public printing; to amend and reenact section 54-09-05 of the North Dakota Century Code, relating to the salary of the secretary of state; and to provide for a report to the legislative assembly.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the secretary of state in section 3 of this Act as follows:

## Subdivision 1.

## SECRETARY OF STATE

Salaries and wages	\$2,302,602
Operating expenses	2,201,061
Capital assets	15,000
Petition review	8,000
Election reform	<u>9,579,728</u>
Total all funds - Base level	\$14,106,391
Less estimated income - Base level	<u>9,944,028</u>
Total general fund appropriation - Base level	\$4,162,363

## Subdivision 2.

## SECRETARY OF STATE - PUBLIC PRINTING

Operating expenses	<u>\$327,000</u>
Total general fund - Base level	<u>\$327,000</u>
Total general fund - Section 1	\$4,489,363
Total special funds - Section 1	\$9,944,028
Total all funds - Section 1	\$14,433,391

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the secretary of state which are included in the appropriation in section 3 of this Act as follows:

## Subdivision 1.

## SECRETARY OF STATE

Salaries and wages	\$334,521
Operating expenses	682,273
Capital assets	(15,000)
Election reform	<u>(4,090,498)</u>
Total all funds - Adjustments/enhancements	(\$3,088,704)
Less estimated income - Adjustments/enhancements	<u>(3,990,055)</u>
Total general fund - Adjustments/enhancements	\$901,351

## Subdivision 2.

## SECRETARY OF STATE - PUBLIC PRINTING

Operating expenses	(\$23,500)
Total general fund - Adjustments/enhancements	(\$23,500)
Total general fund - Section 2	\$877,851
Total special funds - Section 2	(\$3,990,055)
Total all funds - Section 2	(\$3,112,204)

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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 secretary of state for the purpose of defraying the expenses of the secretary of state and public printing, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

## Subdivision 1.

## SECRETARY OF STATE

Salaries and wages	\$2,637,123
Operating expenses	2,883,334
Petition review	8,000
Election reform	5,489,230
Total all funds	\$11,017,687
Less estimated income	5,953,973
Total general fund appropriation	\$5,063,714

## Subdivision 2.

## SECRETARY OF STATE - PUBLIC PRINTING

Operating expenses	\$303,500
Total general fund appropriation	\$303,500
Grand total general fund appropriation - S.B. 2002	\$5,367,214
Grand total special funds appropriation - S.B. 2002	\$5,953,973
Grand total all funds appropriation - S.B. 2002	\$11,321,187

**SECTION 4. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The total general fund appropriation line item in section 3 of this Act includes \$824,153 for a mainframe migration computer project which is a one-time funding item. This amount is not a part of the agency's base budget to be used in preparing the 2009-11 executive budget. The secretary of state shall report to the appropriations committees of the sixty-first legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 5. AMENDMENT.** Section 54-09-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-09-05. Salary of secretary of state.** The annual salary of the secretary of state is ~~seventy seven thousand seven hundred thirty nine eleven~~ seventy six thousand seven hundred thirty nine eleven dollars through June 30, ~~2006~~ 2008, and ~~seventy three thousand five hundred sixty eight~~ seventy nine thousand five hundred sixty eight dollars thereafter.

Approved May 1, 2007  
Filed May 2, 2007

**CHAPTER 30****SENATE BILL NO. 2003**

(Appropriations Committee)  
(At the request of the Governor)

**ATTORNEY GENERAL**

AN ACT to provide an appropriation for defraying the expenses of the attorney general; to provide exemptions; to provide for crime laboratory building project carryover authority; to authorize the use of state property; to provide for budget section reports; to provide legislative intent; to amend and reenact sections 54-12-11 and 54-59-21 of the North Dakota Century Code, relating to the salary of the attorney general and to the criminal justice information sharing system; and to declare an emergency.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the attorney general in section 3 of this Act as follows:

Salaries and wages	\$19,549,735
Operating expenses	8,483,795
Capital assets	5,418,741
Grants	5,944,056
Litigation fees	50,000
State school finance lawsuit	240,000
North Dakota lottery	3,899,191
Arrest and return of fugitives	10,000
Gaming commission	5,039
North Dakota children's advocacy center	<u>100,000</u>
Total all funds - Base level	\$43,700,557
Less estimated income - Base level	<u>24,488,401</u>
Total general fund - Base level	\$19,212,156

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the attorney general which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$2,901,006
Operating expenses	2,112,731
Capital assets	(2,849,010)
Grants	(1,747,056)
State school finance lawsuit	(240,000)
North Dakota lottery	31,398
Gaming commission	1,102
North Dakota children's advocacy center	<u>(100,000)</u>
Total all funds - Adjustments/enhancements	\$110,171
Less estimated income - Adjustments/enhancements	<u>(5,128,707)</u>
Total general fund - Adjustments/enhancements	\$5,238,878



**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the attorney general for the purpose of defraying the expenses of the attorney general, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Salaries and wages	\$22,450,741
Operating expenses	10,596,526
Capital assets	2,569,731
Grants	4,197,000
Litigation fees	50,000
Arrest and return of fugitives	10,000
North Dakota lottery	3,930,589
Gaming commission	6,141
Total all funds	\$43,810,728
Less estimated income	19,359,694
Total general fund appropriation	\$24,451,034

**SECTION 4. ESTIMATED INCOME - GAMING AND EXCISE TAX ALLOCATION FUND - LOCAL GAMING ENFORCEMENT GRANTS.** The grants line item in section 3 of this Act includes \$617,000 for local gaming enforcement grants.

**SECTION 5. FIRE AND TORNADO FUND - FEES.** The attorney general shall charge and collect fees for services provided by the state fire marshal program to entities covered by the fire and tornado fund under chapter 26.1-22. Fees under this section may be collected in amounts of up to a total of \$310,000 for the biennium beginning July 1, 2007, and ending June 30, 2009. All fees collected under this section must be deposited in the attorney general's operating fund.

**SECTION 6. PETROLEUM RELEASE COMPENSATION FUND - FEES.** The attorney general shall charge and collect fees for services provided by the state fire marshal program to entities covered by the petroleum release compensation fund under chapter 23-37. Fees under this section may be collected in amounts of up to a total of \$35,000 for the biennium beginning July 1, 2007, and ending June 30, 2009. All fees collected under this section must be deposited in the attorney general's operating fund.

**SECTION 7. ESTIMATED INCOME - RACING PROMOTION FUND.** Notwithstanding section 53-06.2-11, the estimated income line item in section 3 of this Act includes \$60,988 from the racing promotion fund for the purpose of defraying the expenses of simulcast racing site audits conducted by the attorney general's office for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 8. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The total general fund appropriation line item in section 3 of this Act includes \$1,442,840 from the general fund for construction of a new crime laboratory which is a one-time funding item. This amount is not a part of the agency's base budget to be used in preparing the 2009-11 executive budget. The attorney general shall report to the appropriations committees of the sixty-first legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 9. ADDITIONAL FEDERAL FUNDS - EMERGENCY COMMISSION APPROVAL - LIMIT ON GENERAL FUND EXPENDITURES.** If the

attorney general receives federal funding in excess of federal funding amounts appropriated by the sixtieth legislative assembly for the 2007-09 biennium, the attorney general may spend the additional federal funds, subject to emergency commission approval, but may not spend funding appropriated from the general fund or the multijurisdictional task force grant fund for similar purposes for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 10. LEGISLATIVE INTENT - FULL-TIME EQUIVALENT POSITIONS - BACKGROUND CHECKS.** It is the intent of the sixtieth legislative assembly that of the five new full-time equivalent positions authorized for the attorney general's office to assist with conducting background checks, the attorney general may fill the positions only as necessary to meet workload demands for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 11. SOBRIETY PROGRAM PILOT PROJECT.** The attorney general may establish a pilot sobriety program in one or more judicial districts of the state during the biennium beginning July 1, 2007, and ending June 30, 2009. The sobriety program involves coordination among state, county, and municipal agencies for the purpose of implementing procedures as alternatives to incarceration, including sobriety testing twice per day seven days per week or continuous monitoring, for offenders charged with, or convicted of, driving under the influence of alcohol or controlled substances or other offenses involving alcohol or controlled substances. The attorney general, in cooperation with law enforcement, the judiciary, the department of corrections and rehabilitation, and the department of transportation traffic safety division, may develop guidelines, policies, and procedures for the administration of the pilot sobriety program and to test offenders to enforce compliance with the sobriety program, including urine testing and electronic monitoring, and to establish user fees, all of which are not subject to chapter 28-32. There is created the North Dakota sobriety program fund. The fund consists of moneys received from grants from the United States, agencies of this state, private grants, gifts, or donations, and user fees. The funds are appropriated as a continuing appropriation to the attorney general for expenses necessary for the administration and operation of the sobriety program, including training and travel costs, equipment, and supplies for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 12. ATTORNEY GENERAL - AUTHORIZED USE OF STATE PROPERTY.** The attorney general is authorized to construct a new crime laboratory building on property owned by the state of North Dakota near the existing facility housing the crime laboratory. The attorney general, if necessary to allow for construction of the new crime laboratory, may move the state department of health's storage building located on the site. The attorney general, to the extent possible, shall locate the building to minimize the effect on the operations of the water commission in the area.

**SECTION 13. BUILDING PROJECT - BUDGET SECTION REPORTS.** The attorney general shall provide periodic reports to the budget section on the status of the construction of a new crime laboratory during the 2007-08 interim.

**SECTION 14. LEGISLATIVE INTENT - CRIME LABORATORY - SPACE PLAN.** It is the intent of the sixtieth legislative assembly that the facility management division of the office of management and budget develop a plan for the use of space that becomes available in the existing crime laboratory when the new crime laboratory is completed for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 15. ATTORNEY GENERAL REFUND FUND TRANSFER TO THE GENERAL FUND - EXCEPTION.** Notwithstanding section 54-12-18, the attorney general may retain the balance in the attorney general refund fund that would otherwise be transferred to the general fund on June 30, 2007.

**SECTION 16. EXEMPTION.** Of the funds appropriated in the capital assets line item for the attorney general crime laboratory building project in section 1 of chapter 51 of the 2005 Session Laws, \$3,280,722 is not subject to section 54-44.1-11 and any unexpended funds from this line item are available for construction costs during the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 17. AMENDMENT.** Section 54-12-11 of the North Dakota Century Code is amended and reenacted as follows:

**54-12-11. Salary of attorney general.** The annual salary of the attorney general is ~~seventy-seven thousand eight hundred fifty-five~~ eighty-three thousand six hundred ninety-one dollars through June 30, ~~2006~~ 2008, and ~~eighty-eight thousand seven hundred sixty-one~~ eighty-seven thousand seven hundred sixty-one dollars thereafter.

<sup>19</sup> **SECTION 18. AMENDMENT.** Section 54-59-21 of the North Dakota Century Code is amended and reenacted as follows:

**54-59-21. Criminal justice information sharing board - Membership - Duties and powers - Director.**

1. The criminal justice information sharing board consists of the chief justice of the supreme court or the chief justice's designee, the attorney general or the attorney general's designee, and the chief information officer of the state. The chief information officer is chairman of the board.
2. The board may appoint and employ a director who serves at the pleasure of and under the direct supervision of the board. The information technology department shall provide staff support to the board. The board or director may acquire support staff and employ personnel who are under the direct supervision of the director and the board.
3. The board shall set policy relating to the collection, storage, and sharing of criminal justice information and the systems necessary to perform those functions. The board shall provide operational oversight for criminal justice information sharing activities and shall approve and provide oversight of criminal justice information sharing budgets. The board may appoint an executive committee and an advisory committee that would serve in an advisory capacity to the board.
4. The director may contract with the bureau of criminal investigation for the processing of federal fingerprint identification.

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<sup>19</sup> Section 54-59-21 was also amended by section 7 of Senate Bill No. 2037, chapter 491.

**SECTION 19. EMERGENCY.** The amount of \$16,515 included in the salaries and wages line item and \$77,885 included in the operating expenses line item in section 3 of this Act relating to costs of conducting 2005-07 biennium background checks and section 15 of this Act are declared to be an emergency measure.

Approved April 30, 2007  
Filed May 1, 2007

**CHAPTER 31****SENATE BILL NO. 2004**

(Appropriations Committee)  
(At the request of the Governor)

**STATE AUDITOR**

AN ACT to provide an appropriation for defraying the expenses of the state auditor; and to amend and reenact section 54-10-10 of the North Dakota Century Code, relating to the salary of the state auditor.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the state auditor in section 3 of this Act as follows:

Salaries and wages	\$6,674,851
Operating expenses	876,295
Capital assets	10,000
Total all funds - Base level	\$7,561,146
Less estimated income - Base level	2,435,141
Total general fund appropriation - Base level	\$5,126,005

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the state auditor which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$654,014
Operating expenses	(65,746)
Information technology consultants	100,000
Total all funds - Adjustments/enhancements	\$688,268
Less estimated income - Adjustments/enhancements	152,966
Total general fund appropriation - Adjustments/enhancements	\$535,302

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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 auditor for the purpose of defraying the expenses of the state auditor, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Salaries and wages	\$7,328,865
Operating expenses	810,549
Capital assets	10,000
Information technology consultants	100,000
Total all funds	\$8,249,414
Less estimated income	2,588,107
Total general fund appropriation	\$5,661,307

**SECTION 4. AMENDMENT.** Section 54-10-10 of the North Dakota Century Code is amended and reenacted as follows:

**54-10-10. Salary of state auditor.** The annual salary of the state auditor is ~~seventy~~ seventy-six thousand ~~seven~~ five hundred ~~thirty-nine~~ eleven dollars through June 30, ~~2006~~ 2008, and ~~seventy-three~~ seventy-nine thousand five hundred ~~sixty-eight~~ seventy-one dollars thereafter.

Approved May 1, 2007  
Filed May 2, 2007

**CHAPTER 32****SENATE BILL NO. 2005**

(Appropriations Committee)  
(At the request of the Governor)

**STATE TREASURER**

AN ACT to provide an appropriation for defraying the expenses of the state treasurer; to provide legislative intent; to amend and reenact section 54-11-13 of the North Dakota Century Code, relating to the salary of the state treasurer; and to provide for a report to the legislative assembly.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the state treasurer in section 3 of this Act as follows:

Salaries and wages	\$644,760
Operating expenses	154,787
In lieu of tax payments	<u>1,545,000</u>
Total general fund - Base level	\$2,344,547

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the state treasurer which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$181,417
Operating expenses	748,228
In lieu of tax payments	<u>(180,000)</u>
Total general fund - Adjustments/enhancements	\$749,645

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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 treasurer for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Salaries and wages	\$826,177
Operating expenses	903,015
In lieu of tax payments	<u>1,365,000</u>
Total general fund appropriation	\$3,094,192

**SECTION 4. AMENDMENT.** Section 54-11-13 of the North Dakota Century Code is amended and reenacted as follows:

**54-11-13. Salary of state treasurer.** The annual salary of the state treasurer is ~~sixty-six~~ seventy-two thousand ~~eight~~ two hundred ~~two~~ fifty-three dollars through June 30, ~~2006~~ 2008, and ~~sixty-nine~~ seventy-five thousand ~~four~~ one hundred ~~seventy-four~~ forty-three dollars thereafter.

**SECTION 5. LEGISLATIVE INTENT - FUTURE ADDITIONAL EMPLOYEE POSITIONS.** It is the intent of the sixtieth legislative assembly that future legislative assemblies not approve any additional employee positions for the office of the state treasurer and that any future expansion of administrative duties or responsibilities relative to state treasury activities be assigned to the office of management and budget.

**SECTION 6. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The total general fund appropriation line item in section 3 of this Act includes \$768,228 for the one-time funding items identified in this section. This amount is not a part of the agency's base budget to be used in preparing the 2009-11 executive budget. The state treasurer shall report to the appropriations committees of the sixty-first legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2007, and ending June 30, 2009.

Rewrite of mainframe software programs relating to tax distributions	\$768,228
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Approved April 30, 2007  
Filed May 1, 2007



**CHAPTER 33****SENATE BILL NO. 2006**

(Appropriations Committee)  
(At the request of the Governor)

**TAX COMMISSIONER**

AN ACT to provide an appropriation for defraying the expenses of the office of the state tax commissioner and for payment of state reimbursement under the homestead tax credit; to provide for a transfer; to amend and reenact section 57-01-04 of the North Dakota Century Code, relating to the tax commissioner's salary; to provide an exemption from the provisions of section 54-44.1-11 of the North Dakota Century Code; and to provide for a report to the legislative assembly.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the state tax commissioner in section 3 of this Act as follows:

Salaries and wages	\$13,466,823
Operating expenses	4,613,329
Capital assets	25,000
Homestead tax credit	4,500,000
Integrated tax system	<u>14,000,000</u>
Total all funds	\$36,605,152
Less estimated income	<u>14,120,000</u>
Total general fund - Base level	\$22,485,152

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the state tax commissioner which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$1,276,659
Operating expenses	1,417,485
Capital assets	(7,000)
Integrated tax system	<u>(8,643,298)</u>
Total all funds - Adjustments/enhancements	(\$5,956,154)
Less estimated income - Adjustments/enhancements	<u>(12,420,000)</u>
Total general fund - Adjustments/enhancements	\$6,463,846

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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 tax commissioner for the purpose of defraying the expenses of the state tax commissioner and paying the state reimbursement under the homestead tax credit, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Salaries and wages	\$14,743,482
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Operating expenses	6,030,814
Capital assets	18,000
Homestead tax credit	4,500,000
Integrated tax system	<u>5,356,702</u>
Total all funds	\$30,648,998
Less estimated income	<u>1,700,000</u>
Total general fund appropriation	\$28,948,998

**SECTION 4. TRANSFER.** There is transferred to the general fund in the state treasury, out of motor vehicle fuel tax revenue, collected pursuant to section 57-43.1-02, the sum of \$1,274,056 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 these taxes.

**SECTION 5. EXEMPTION.** The amount appropriated for the integrated tax system, as contained in section 6 of chapter 6 of the 2005 Session Laws, is not subject to the provisions of section 54-44.1-11 and the funds are available for continued work on the integrated tax system during the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 6. AMENDMENT.** Section 57-01-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-01-04. Salary.** The annual salary of the state tax commissioner is ~~seventy-six eighty-three thousand seven hundred seventy-four thirty-nine~~ dollars through June 30, ~~2006~~ 2008, and ~~seventy-nine eighty-six thousand eight three~~ hundred ~~forty-five sixty~~ dollars thereafter.

**SECTION 7. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The total general fund appropriation line item in section 3 of this Act includes \$5,356,702 for the one-time funding items identified in this section. This amount is not a part of the agency's base budget to be used in preparing the 2009-11 executive budget. The state tax commissioner shall report to the appropriations committees of the sixty-first legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2007, and ending June 30, 2009.

Principal and interest costs for the integrated tax processing system      \$5,356,702

Approved April 9, 2007  
Filed April 10, 2007

**CHAPTER 34****SENATE BILL NO. 2007**

(Appropriations Committee)  
(At the request of the Governor)

**LABOR COMMISSIONER**

AN ACT to provide an appropriation for defraying the expenses of the labor commissioner; and to provide a contingent appropriation.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the labor commissioner in section 3 of this Act as follows:

Salaries and wages	\$1,135,861
Operating expenses	324,343
Total all funds - Base level	\$1,460,204
Less estimated income - Base level	498,965
Total general fund - Base level	\$961,239

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the labor commissioner which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$106,750
Operating expenses	(15,113)
Operating expenses contingency	2,920
Total all funds - Adjustments/enhancements	\$94,557
Less estimated income - Adjustments/enhancements	(97,267)
Total general fund - Adjustments/enhancements	\$191,824

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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 labor commissioner for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Salaries and wages	\$1,242,611
Operating expenses	309,230
Operating expenses contingency	2,920
Total all funds	\$1,554,761
Less estimated income	401,698
Total general fund appropriation	\$1,153,063

**SECTION 4. CONTINGENT APPROPRIATION.** The funds appropriated in the operating expenses contingency line item in section 3 of this Act are available to the labor commissioner contingent upon the passage of Senate Bill No. 2121 by the sixtieth legislative assembly.

Approved April 9, 2007  
Filed April 10, 2007

**CHAPTER 35****SENATE BILL NO. 2008**

(Appropriations Committee)  
(At the request of the Governor)

**PUBLIC SERVICE COMMISSION**

AN ACT to provide an appropriation for defraying the expenses of the public service commission; to amend and reenact sections 49-01-05, 64-02-10, 64-02-13, and 64-02-13.1 of the North Dakota Century Code, relating to the salary of public service commissioners and testing of weighing and measuring devices; to provide for a legislative council study; to provide for a report to the legislative assembly; and to provide for a report to the budget section.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the public service commission in section 3 of this Act as follows:

Salaries and wages	\$5,122,832
Operating expenses	1,408,153
Capital assets	88,511
Grants	67,000
Abandoned mined lands contractual services	3,668,492
Rail rate complaint case	<u>945,000</u>
Total all funds - Base level	\$11,299,988
Less estimated income - Base level	<u>6,937,151</u>
Total general fund - Base level	\$4,362,837

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the public service commission which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$558,150
Operating expenses	227,703
Capital assets	69,473
Grants	(59,000)
Abandoned mined lands contractual services	831,508
Rail rate complaint case	<u>(45,000)</u>
Total all funds - Adjustments/enhancements	\$1,582,834
Less estimated income - Adjustments/enhancements	<u>1,068,231</u>
Total general fund - Adjustments/enhancements	\$514,603

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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 public service commission for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Salaries and wages	\$5,680,982
Operating expenses	1,635,856
Capital assets	157,984
Grants	8,000
Abandoned mined lands contractual services	4,500,000
Rail rate complaint case	900,000
Total all funds	\$12,882,822
Less estimated income	8,005,382
Total general fund appropriation	\$4,877,440

**SECTION 4. EXEMPTION - LIMIT.** The amount of \$800,000 appropriated for the rail rate complaint case from the beginning farmer revolving loan fund, as contained in section 3 of chapter 8 of the 2005 Session Laws, is not subject to the provision of section 54-44.1-11. Any unexpected funds from the rail rate complaint case line item are available for use for expenditures relating to the rail rate complaint case. The \$800,000 appropriated in section 3 of this Act from the beginning farmer revolving loan fund is limited to the amount of any unspent beginning farmer revolving loan funds from the 2005-07 biennium appropriation, as contained in section 3 of chapter 8 of the 2005 Session Laws.

**SECTION 5. AMENDMENT.** Section 49-01-05 of the North Dakota Century Code is amended and reenacted as follows:

**49-01-05. Salary of commissioners.** The annual salary of a commissioner is ~~seventy-two seventy-eight thousand six five hundred sixty-nine ninety-nine~~ dollars through June 30, ~~2006~~ 2008, and ~~seventy-five eighty-one thousand five seven hundred seventy-six forty-three~~ dollars thereafter. All fees received or charged by any commissioner for any act or service rendered in any official capacity must be accounted for and paid over by the commissioner monthly to the state treasurer and must be credited to the general fund of the state.

**SECTION 6. AMENDMENT.** Section 64-02-10 of the North Dakota Century Code is amended and reenacted as follows:

**64-02-10. Fees to test or calibrate weighing and measuring devices.** The commission shall collect the following fees to:

1. Test railroad track or truck scale	\$171.00
2. Test livestock and vehicle scale	171.00
3. Test livestock scale if the sales ring or buying station scale owner transports to the scale and furnishes all test weights and manpower needed to properly test the scale	96.00
4. Test auxiliary beam on livestock, motor truck, and motor truck dump scale	24.00
5. Test overhead monorail, track, hopper, dormant, deck, and hanging scale	53.00
6. Test movable platform scale	11.00

7.	Test counter or computing scale	11.00
8.	Test hanging scale of fifty pound [22.68 kilogram] capacity or less	11.00
9.	Test a retail motor fuel device	11.00
10.	Test or calibrate weighing and measuring standards, per metrologist, per quarter hour or fraction thereof	17.00
11.	Test mobile delivery gasoline and fuel oil meter	24.00
12.	Test gasoline, LPG, or fuel oil meter on common carrier pipelines, or any other meter used in loading railway cars, transports, or other conveyances	53.00
13.	Test propane, ag chemical, or liquid fertilizer meter	39.00
14.	Test crane scale	107.00
15.	Test or calibrate weighing and measuring devices other than the above and those set by rule; per inspector per quarter hour or fraction thereof	11.00
16.	Witnessing any of the above tests	Fifty percent of the applicable fee

When a rejected weighing or measuring device has been reconditioned or replaced by new equipment, it must be retested and certified before being put into use except as otherwise provided by rule. The fee for retest and certification is the same as for the first test and certification.

When a test of a weighing or measuring device is required in addition to the regularly scheduled ~~annual~~ test, the commission shall charge a fee equal to the cost of operating the motor vehicle used in conducting the test. The mileage charges, as determined by the commission, must be in addition to the regular test fee and calculated to cover the costs of the additional travel. Where a test has been requested and the person requesting it fails to appear or to have the weighing or measuring device ready for testing at the arranged time, there is a charge of ten dollars a quarter hour for the time between the arranged time and the time at which the test can begin.

**SECTION 7. AMENDMENT.** Section 64-02-13 of the North Dakota Century Code is amended and reenacted as follows:

**64-02-13. Commission to test weighing or measuring devices ~~annually~~.** The commission may test or calibrate weighing or measuring devices ~~annually~~. The owner of any weighing or measuring device used in this state is responsible for its accuracy and condition; ~~and may have it tested annually, but must have it tested at least every fifteen months.~~ The public service commission shall determine the frequency of required testing for each category of weighing and measuring device,

which may not exceed twenty-four months. If upon testing the weighing or measuring device is within the permitted tolerance, it must be sealed. Inspections and testing of farm milk bulk tank equipment may be made only by the state dairy department under section 4-30-18. Inspections and testing of oil and gas production meters and measuring devices may be made only by or under the direction of the industrial commission under section 38-08-04. If upon complaint the commission finds the weighing or measuring device is within the permitted tolerance, the cost of the test, unless waived by the commission, must be paid by the complainant; and in all other cases the cost of testing must be paid by the owner of the equipment.

**SECTION 8. AMENDMENT.** Section 64-02-13.1 of the North Dakota Century Code is amended and reenacted as follows:

**64-02-13.1. Exception from ~~annual~~ regularly scheduled test of weighing or measuring device.** A weighing or measuring device used to conduct sales by a transient vendor is exempt from this chapter.

**SECTION 9. LEGISLATIVE COUNCIL STUDY - REAL ESTATE AUCTIONS.** The legislative council shall consider studying, during the 2007-08 interim, the practices and laws relating to the sale of real estate by auctioneers. The study must include a review of the sale of multiple parcels of property at a single sale. The legislative council shall report its finding and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 10. GEOGRAPHIC INFORMATION SYSTEM INITIATIVE - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The public service commission shall provide a report to the sixty-first legislative assembly regarding the status of the department's geographic information system initiative.

**SECTION 11. METROLOGY PROGRAM - REPORT TO BUDGET SECTION.** The public service commission and facility management division shall develop a schedule for metrology services to be conducted within the current metrology facility and when the facility can be used for other functions during the 2007-09 biennium. The public service commission and facility management division shall provide a report regarding the facility use agreement and the future of the metrology laboratory to the office of management and budget and budget section by July 1, 2008.

**SECTION 12. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The total general fund appropriation line item in section 3 of this Act includes \$89,484 for the one-time funding items identified in this section. This amount is not a part of the agency's base budget to be used in preparing the 2009-11 executive budget. The public service commission shall report to the appropriations committees of the sixty-first legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2007, and ending June 30, 2009.

Weights and measures equipment	\$39,000
Videoconferencing equipment	20,000
Prover	<u>30,484</u>
Total	\$89,484

Approved April 30, 2007  
Filed May 1, 2007



**CHAPTER 36****SENATE BILL NO. 2009**

(Appropriations Committee)  
(At the request of the Governor)

**AGRICULTURE COMMISSIONER**

AN ACT to provide an appropriation for defraying the expenses of the agriculture commissioner; to amend and reenact sections 4-01-21 and 4-37-02 of the North Dakota Century Code, relating to the salary of the agriculture commissioner and to the agriculture in the classroom council; to provide for transfers; to provide for legislative intent; to provide for a legislative council study; to provide for a performance audit; to provide for a report to the budget section; and to declare an emergency.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the agriculture commissioner in section 3 of this Act as follows:

Salaries and wages	\$5,783,517
Operating expenses	4,255,875
Capital assets	5,000
Grants	1,774,225
Board of animal health	2,036,027
Wildlife services contingency	130,000
Crop harmonization board	25,000
Total all funds - Base level	\$14,009,644
Less estimated income - Base level	9,486,532
Total general fund - Base level	\$4,523,112

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the agriculture commissioner which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$1,209,097
Operating expenses	458,508
Grants	75,000
Board of animal health	263,675
Wildlife services contingency	(130,000)
Wildlife services	1,050,000
Total all funds - Adjustments/enhancements	\$2,926,280
Less estimated income - Adjustments/enhancements	1,746,439
Total general fund - Adjustments/enhancements	\$1,179,841

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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 agriculture commissioner for the

purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Salaries and wages	\$6,992,614
Operating expenses	4,714,383
Capital assets	5,000
Grants	1,849,225
Board of animal health	2,299,702
Wildlife services	1,050,000
Crop harmonization board	25,000
Total all funds	\$16,935,924
Less estimated income	11,232,971
Total general fund appropriation	\$5,702,953

**SECTION 4. ESTIMATED INCOME - ENVIRONMENT AND RANGELAND PROTECTION FUND.** The estimated income line item in section 3 of this Act includes the sum of \$3,142,109, or so much of the sum as may be available, from the environment and rangeland protection fund for the purpose of defraying the expenses of various agriculture department programs, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 5. ANHYDROUS AMMONIA STORAGE INSPECTION FUND.** The estimated income line item in section 3 of this Act includes the sum of \$65,912, or so much of the sum as may be available, from the anhydrous ammonia storage inspection fund for the purpose of defraying the expenses of regulating anhydrous ammonia storage facilities, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 6. ESTIMATED INCOME - GAME AND FISH FUND.** The estimated income line item in section 3 of this Act includes the sum of \$1,019,684, or so much of the sum as may be necessary, from the game and fish department operating fund for the purpose of defraying the expenses of various agriculture department programs for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 7. INTENT - SALARY EQUITY.** The sum of \$259,000 included in the salaries and wages line item in section 3 of this Act is for salary equity increases, which must be based on market.

**SECTION 8. TRANSFER - APPROPRIATION.** The office of management and budget shall transfer \$150,000 from the general fund to the environment and rangeland protection fund during the period beginning July 1, 2007, and ending June 30, 2009.

**SECTION 9. TRANSFER - APPROPRIATION.** The North Dakota state university extension service shall provide \$50,000 from the pesticide enforcement fund to the agriculture commissioner for deposit in the environment and rangeland protection fund for the endangered species program during the period beginning July 1, 2007, and ending June 30, 2009.

**SECTION 10. INTENT - EMERGENCY COMMISSION REQUEST.** The agriculture commissioner may request from the emergency commission additional full-time equivalent positions for the state meat inspection program if demand for the program increases sufficient to require the positions during the period beginning July 1, 2007, and ending June 30, 2009.

**SECTION 11. TRANSFER.** The commissioner shall transfer \$200,000 from the environment and rangeland protection fund to the minor use pesticide fund.

**SECTION 12. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The general fund appropriation in Senate Bill No. 2338 includes \$90,836 for the one-time funding items identified in this section. This amount is not a part of the agency's base budget to be used in preparing the 2009-11 executive budget. The agriculture commissioner shall report to the appropriations committees of the sixty-first legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2007, and ending June 30, 2009.

Animal tracking data base \$90,836

**SECTION 13. SPECIAL REVENUE - REPORT TO BUDGET SECTION.** All revenues from inspection and grading services provided by state meat inspectors and graders must be allocated to the state meat inspection program. The agriculture commissioner shall report annually to the budget section regarding the revenues and expenditures for the state meat inspection program.

**SECTION 14. ENDANGERED SPECIES PROGRAM - REPORT TO BUDGET SECTION.** The agriculture commissioner shall report annually to the budget section regarding the status of the endangered species program.

**SECTION 15. LEGISLATIVE COUNCIL STUDY - TRANSFER OF PROGRAM.** The legislative council shall consider studying, during the 2007-08 interim, the transfer of predator control from the agriculture commissioner to the game and fish department. The study should include a review of the South Dakota predator control program. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 16. PERFORMANCE AUDIT - WILDLIFE SERVICES.** The state auditor shall conduct a performance audit of the services provided pursuant to the cooperative agreement between the agriculture commissioner and the United States department of agriculture wildlife services during the biennium beginning July 1, 2007, and ending June 30, 2009. The performance audit must include a review of all funding sources, including grants from the agriculture commissioner, game and fish funds, and federal funds, for the wildlife damage management program in North Dakota for the 2003-05, 2005-07, and 2007-09 bienniums. The results of the performance audit must be presented to the legislative audit and fiscal review committee and filed with the appropriations committees during the sixty-first legislative assembly.

**SECTION 17. AMENDMENT.** Section 4-01-21 of the North Dakota Century Code is amended and reenacted as follows:

**4-01-21. Salary of agriculture commissioner.** The annual salary of the agriculture commissioner is ~~seventy-two~~ seventy-eight thousand ~~six~~ six hundred ~~sixty-nine~~ ninety-nine dollars through June 30, ~~2006~~ 2008, and ~~seventy-five~~ eighty-one thousand ~~five~~ seven hundred ~~seventy-six~~ forty-three dollars thereafter.

**SECTION 18. AMENDMENT.** Section 4-37-02 of the North Dakota Century Code is amended and reenacted as follows:

**4-37-02. Agriculture in the classroom council.** An agriculture in the classroom council is established. The council consists of sixteen members to be appointed by the agriculture commissioner. One member must be the agriculture commissioner or the commissioner's designee, and one member must be the superintendent of public instruction or the superintendent's designee. Agriculture in the classroom grant recipients are nonvoting members of the council.

**SECTION 19. EMERGENCY.** The sum of \$130,000 included in the wildlife services line item in section 3 of this Act is declared to be an emergency measure.

Approved April 26, 2007  
Filed April 27, 2007

**CHAPTER 37****SENATE BILL NO. 2010**

(Appropriations Committee)  
(At the request of the Governor)

**INSURANCE COMMISSIONER**

AN ACT to provide an appropriation for defraying the expenses of the insurance commissioner; to provide an appropriation to the legislative council; to provide for fund transfers; to provide for making payments of insurance premiums tax collections to fire departments; and to amend and reenact sections 26.1-01-09 and 26.1-22-10 of the North Dakota Century Code, relating to the commissioner's salary and insurance of personal property by the state fire and tornado fund.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the insurance commissioner in section 3 of this Act as follows:

Salaries and wages	\$5,096,278
Operating expenses	2,163,377
Grants	<u>6,420,000</u>
Total special funds appropriation - Base level	\$13,679,655

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the insurance commissioner which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$696,324
Operating expenses	15,000
Grants	<u>70,000</u>
Total special funds appropriation - Adjustments/enhancements	\$781,324

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from federal funds and other income, to the insurance commissioner for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Salaries and wages	\$5,792,602
Operating expenses	2,178,377
Grants	<u>6,490,000</u>
Total special funds appropriation	\$14,460,979

**SECTION 4. APPROPRIATION - LEGISLATIVE COUNCIL.** There is appropriated out of any moneys in the insurance regulatory trust fund in the state treasury, not otherwise appropriated, the sum of \$70,000, or so much of the sum as may be necessary, to the legislative council for the purpose of defraying expenses of

legislative members attending functions of the national conference of insurance legislators, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 5. INSURANCE PREMIUMS TAX COLLECTIONS PAYMENTS.**

Section 3 of this Act includes the sum of \$6,320,000, or so much of the sum as may be necessary to the insurance commissioner, of which \$6,200,000 is for the purpose of making payments of insurance premiums tax collections to fire departments and \$120,000 is for the purpose of making two equal payments to the North Dakota firefighter's association for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 6. BONDING FUND.** Section 3 of this Act includes the sum of \$44,131, or so much of the sum as may be necessary, from the state bonding fund to pay bonding fund administrative expenses for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 7. FIRE AND TORNADO FUND.** Section 3 of this Act includes the sum of \$1,173,804, or so much of the sum as may be necessary, from the state fire and tornado fund, including \$170,000 for a grant to the North Dakota firefighter's association and \$1,003,804 to pay fire and tornado fund administrative expenses for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 8. UNSATISFIED JUDGMENT FUND.** Section 3 of this Act includes the sum of \$16,546, or so much of the sum as may be necessary, from the state unsatisfied judgment fund to pay unsatisfied judgment fund administrative expenses for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 9. PETROLEUM TANK RELEASE COMPENSATION FUND.** Section 3 of this Act includes the sum of \$108,674, or so much of the sum as may be necessary, from the petroleum tank release compensation fund to pay petroleum tank release compensation fund administrative expenses for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 10. ANHYDROUS AMMONIA STORAGE FACILITY INSPECTION FUND.** Section 3 of this Act includes the sum of \$150,000, or so much of the sum as may be necessary, from the anhydrous ammonia storage facility inspection fund to pay for anhydrous ammonia tank inspection costs for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 11. AMENDMENT.** Section 26.1-01-09 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-01-09. Salary of commissioner.** The annual salary of the commissioner is ~~seventy seven~~ seventy-six thousand ~~seven~~ five hundred ~~thirty-nine~~ eleven dollars through June 30, ~~2006~~ 2008, and ~~seventy-three~~ seventy-nine thousand five hundred ~~sixty-eight~~ seventy-one dollars thereafter.

**SECTION 12. AMENDMENT.** Section 26.1-22-10 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-22-10. Commissioner to provide insurance on all buildings and personal property.** Upon application the commissioner shall provide for insurance against loss by fire, lightning, inherent explosion, windstorm, cyclone, tornado and hail, explosions, riot attending a strike, aircraft, smoke, vehicles, or any other risks of direct physical loss, all in the manner and subject to the restrictions of the standard fire insurance policy and standard endorsement, and no other hazards, in the fund,

on all buildings owned by the state, state industries, political subdivisions, international peace gardens, and winter shows, and the fixtures and permanent contents in such buildings, to the extent of not to exceed the insurable value of such property, as the value is agreed to between the commissioner and the officer or board having control of such property, or, in case of disagreement, by approval through arbitration. The commissioner may allow personal property to be insured on a blanket basis.

All buildings and the contents of the buildings owned by the state mill and elevator association, in lieu of coverage under this chapter, may, at the option of the industrial commission, be insured by private insurance companies licensed to do business in this state, against at least all the types of hazards insured against by the fund. If the industrial commission exercises the option provided in this section, the commission shall seek competitive sealed bids, shall invite the fund to submit a bid, and may reject any or all bids received.

All public buildings owned by a political subdivision, in lieu of coverage provided for in this section, may at the option of the governing body of the political subdivision be insured on the basis of competitive sealed bids, through the fund which must be invited to submit a sealed bid or private insurance companies licensed to do business in this state, against damage resulting from hazards, which include those types of hazards that may be insured against by the fund. The governing body may reject any or all such bids.

All public libraries owned by the state or political subdivisions may, in addition to the coverage provided for in this section, be covered against damage through vandalism. If this coverage cannot be extended to the public libraries situated within this state, the libraries may contract for this coverage with private insurance companies; provided, that this coverage meets the recommendations of the insurance code of the American library association.

Approved April 30, 2007  
Filed May 1, 2007

**CHAPTER 38****SENATE BILL NO. 2011**

(Appropriations Committee)  
(At the request of the Governor)

**SECURITIES COMMISSIONER**

AN ACT to provide an appropriation for defraying the expenses of the securities commissioner; and to provide for a report to the legislative assembly.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the securities commissioner in section 3 of this Act as follows:

Salaries and wages	\$1,105,588
Operating expenses	<u>570,855</u>
Total all funds - Base level	\$1,676,443
Less estimated income - Base level	<u>217,199</u>
Total general fund - Base level	\$1,459,244

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the securities commissioner which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$160,933
Operating expenses	<u>4,456</u>
Total general fund - Adjustments/enhancements	\$165,389

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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 securities commissioner for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Salaries and wages	\$1,266,521
Operating expenses	<u>575,311</u>
Total all funds	\$1,841,832
Less estimated income	<u>217,199</u>
Total general fund appropriation	\$1,624,633

**SECTION 4. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The total general fund appropriation line item in section 3 of this Act includes \$16,876 for the one-time funding identified in this section. This amount is not a part of the agency's base budget to be used in preparing the 2009-11 executive budget. The securities department shall report to the appropriations committees of the sixty-first legislative



assembly on the use of this one-time funding for the biennium beginning July 1, 2007, and ending June 30, 2009.

Document storage and retrieval system	\$16,876
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Approved April 30, 2007  
Filed May 1, 2007

**CHAPTER 39****SENATE BILL NO. 2012**(Appropriations Committee)  
(At the request of the Governor)**DEPARTMENT OF HUMAN SERVICES**

AN ACT to provide an appropriation for defraying the expenses of the department of human services; to provide statements of legislative intent; to provide for a legislative council report; to provide for legislative council studies; to authorize a Bank of North Dakota loan; to provide a contingent appropriation; to provide for transfers; to create and enact a new section to chapter 23-01 and chapter 23-39 of the North Dakota Century Code, relating to programs for children with special health care needs; to amend and reenact sections 25-17-02, 25-17-03, 50-06-01.2, 50-06-01.4, 50-06-24, and 50-24.4-15 of the North Dakota Century Code, relating to rulemaking and to the provision of medical food for individuals with metabolic disorders, the structure of the department of human services, guardianship services, and to nursing home property-related costs; and to repeal chapter 50-10 of the North Dakota Century Code, relating to aid to crippled children.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the department of human services in section 3 of this Act as follows:

## Subdivision 1.

## MANAGEMENT

Salaries and wages	\$10,708,738
Operating expenses	60,968,708
Capital assets	<u>2,756</u>
Total all funds - Base level	\$71,680,202
Less estimated income - Base level	<u>52,153,741</u>
Total general fund - Base level	\$19,526,461

## Subdivision 2.

## PROGRAM AND POLICY

Salaries and wages	\$22,812,481
Operating expenses	39,780,685
Capital assets	33,864
Grants	332,838,450
Grants - Medical assistance	<u>1,006,356,338</u>
Total all funds - Base level	\$1,401,821,818
Less estimated income - Base level	<u>1,035,138,447</u>
Total general fund - Base level	\$366,683,371

## Subdivision 3.

## HUMAN SERVICE CENTERS AND INSTITUTIONS

Northwest human service center	\$7,352,302
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North central human service center	15,347,691
Lake region human service center	9,143,432
Northeast human service center	20,583,131
Southeast human service center	23,765,764
South central human service center	12,196,647
West central human service center	18,587,469
Badlands human service center	9,241,398
State hospital	47,917,171
Developmental center	<u>42,425,282</u>
Total all funds - Base level	\$206,560,287
Less estimated income - Base level	<u>108,348,645</u>
Total general fund - Base level	\$98,211,642
Grand total general fund appropriation - Base level	\$484,421,474
Grand total special funds appropriation - Base level	\$1,195,640,833
Grand total all funds appropriation - Base level	\$1,680,062,307

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the department of human services which are included in the appropriation in section 3 of this Act as follows:

## Subdivision 1.

## MANAGEMENT

Salaries and wages	\$815,145
Operating expenses	(28,594,686)
Capital assets	<u>(2,471)</u>
Total all funds - Adjustments/enhancements	(\$27,782,012)
Less estimated income - Adjustments/enhancements	<u>(29,068,576)</u>
Total general fund - Adjustments/enhancements	\$1,286,564

## Subdivision 2.

## PROGRAM AND POLICY

Salaries and wages	\$2,456,130
Operating expenses	26,791,117
Capital assets	(33,465)
Grants	9,023,335
Grants - Medical assistance	<u>102,286,592</u>
Total all funds - Adjustments/enhancements	\$140,523,709
Less estimated income - Adjustments/enhancements	<u>75,226,362</u>
Total general fund - Adjustments/enhancements	\$65,297,347

## Subdivision 3.

## HUMAN SERVICE CENTERS AND INSTITUTIONS

Northwest human service center	\$146,655
North central human service center	1,446,512
Lake region human service center	683,064
Northeast human service center	1,537,933
Southeast human service center	2,316,347
South central human service center	2,496,321
West central human service center	2,113,795
Badlands human service center	564,763
State hospital	16,838,960
Developmental center	<u>5,331,330</u>

Total all funds - Adjustments/enhancements	\$33,475,680
Less estimated income - Adjustments/enhancements	<u>4,472,489</u>
Total general fund - Adjustments/enhancements	\$29,003,191
Grand total general fund appropriation - Adjustments/enhancements	\$95,587,102
Grand total special funds appropriation - Adjustments/enhancements	\$54,130,275
Grand total all funds appropriation - Adjustments/enhancements	\$149,717,377

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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 for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

## Subdivision 1.

## MANAGEMENT

Salaries and wages	\$11,523,883
Operating expenses	32,374,022
Capital assets	<u>285</u>
Total all funds	\$43,898,190
Less estimated income	<u>23,085,165</u>
Total general fund	\$20,813,025

## Subdivision 2.

## PROGRAM AND POLICY

Salaries and wages	\$25,268,611
Operating expenses	66,571,802
Capital assets	399
Grants	341,861,785
Grants - Medical assistance	<u>1,108,642,930</u>
Total all funds	\$1,542,345,527
Less estimated income	<u>1,110,364,809</u>
Total general fund	\$431,980,718

## Subdivision 3.

## HUMAN SERVICE CENTERS AND INSTITUTIONS

Northwest human service center	\$7,498,957
North central human service center	16,794,203
Lake region human service center	9,826,496
Northeast human service center	22,121,064
Southeast human service center	26,082,111
South central human service center	14,692,968
West central human service center	20,701,264
Badlands human service center	9,806,161
State hospital	64,756,131
Developmental center	<u>47,756,612</u>
Total all funds - Subdivision 3	\$240,035,967
Less estimated income - Subdivision 3	<u>112,821,134</u>
Total general fund - Subdivision 3	\$127,214,833
Grand total general fund appropriation - S.B. 2012	\$580,008,576
Grand total special funds appropriation - S.B. 2012	\$1,249,771,108
Grand total all funds appropriation - S.B. 2012	\$1,829,779,684

**SECTION 4. FUNDING TRANSFERS - EXCEPTION - AUTHORIZATION.**

Notwithstanding section 54-16-04, the department of human services may transfer appropriation authority between line items within each subdivision of section 3 of this Act and between subdivisions within section 3 of this Act for the biennium beginning July 1, 2007, and ending June 30, 2009. The department shall notify the office of management and budget of any transfer made pursuant to this section. The department shall report to the budget section after June 30, 2008, any transfers made in excess of \$50,000 and to the appropriations committees of the sixty-first legislative assembly regarding any transfers made pursuant to this section.

**SECTION 5. BANK OF NORTH DAKOTA LOAN AUTHORIZATION - BUDGET SECTION APPROVAL - CONTINGENT APPROPRIATION.**

If cost and caseload/utilization of developmental disabilities services is more than anticipated by the sixtieth legislative assembly, the department of human services, subject to budget section approval, may borrow the sum of \$3,500,000, or so much of the sum as may be necessary, from the Bank of North Dakota, which is appropriated for the purpose of providing the state matching share of additional medical assistance grants for developmental disabilities services for the biennium beginning July 1, 2007, and ending June 30, 2009. The department of human services shall request funding from the sixty-first legislative assembly to repay any loan obtained pursuant to provisions of this section, including accrued interest.

**SECTION 6. CRITICAL ACCESS HOSPITALS - MEDICAL ASSISTANCE REIMBURSEMENT METHOD.**

The department of human services shall implement a cost-based reimbursement system for inpatient and outpatient hospital services of critical access hospitals based on the funding provided in section 3 of this Act for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 7. DEPARTMENT OF HUMAN SERVICES STUDY - REBASING MEDICAL SERVICES PAYMENT RATES - REPORT TO LEGISLATIVE ASSEMBLY.**

The department of human services shall determine, during the 2007-08 interim and with the assistance of a health care consultant, the estimated cost of rebasing payment rates under the medical assistance program for hospital, physician, dentist, ambulance, and chiropractic services to the actual cost of providing these services for use in preparing the department's budget request for the 2009-11 biennium. The base year used in developing the cost estimate must be the most recent calendar year for which complete financial information is available to the department. The department shall report its findings and recommendations to the appropriations committees of the sixty-first legislative assembly. The department's recommendations may include options for staggered implementation or earlier implementation date preferences for service providers that have medical assistance service revenue that is ten percent or more of its total patient revenue. Any funds appropriated by the sixtieth legislative assembly to the department for providing the information required by this section may not be spent for other purposes during the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 8. LEGISLATIVE COUNCIL STUDY - NURSING HOME RATE EQUALIZATION.**

The legislative council shall consider studying, during the 2007-08 interim, the feasibility and desirability of continuing the equalization of nursing home payment rates and the feasibility and desirability of establishing a provider tax or assessment on nursing homes. The study must include input from representatives of the department of human services, other appropriate state agencies, and the nursing home industry. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 9. LEGISLATIVE COUNCIL STUDY - INFANT DEVELOPMENT PROGRAM.** The legislative council shall consider studying, during the 2007-08 interim, infant development programs. The study, if conducted, must include a review of the state's lead agency agreement, service coordination, staffing, and funding structure, including the adequacy of the funding and the equitable distribution of the funds to providers. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 10. LEGISLATIVE INTENT - DEVELOPMENTAL DISABILITIES SERVICE PROVIDERS FUNDING INCREASES - EMPLOYEE SALARY INCREASE PRIORITY.** It is the intent of the sixtieth legislative assembly that developmental disabilities service providers give priority to using the increased funding being provided for the 2007-09 biennium for increasing employees' salaries.

**SECTION 11. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The total general fund appropriation line item in subdivision 3 of section 3 of this Act includes \$8,244,131 for the one-time funding items identified in this section. This amount is not a part of the agency's base budget to be used in preparing the 2009-11 executive budget. The department of human services shall report to the appropriations committees of the sixty-first legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2007, and ending June 30, 2009.

State hospital	
Sex offender treatment addition	\$3,100,000
Capital improvements	3,062,757
Extraordinary repairs	1,153,500
Developmental center	
Capital improvements	300,000
Extraordinary repairs	547,092
Equipment	80,782
Total	\$8,244,131

**SECTION 12. METHAMPHETAMINE TREATMENT SERVICES.** The department of human services shall use the \$700,000 from the general fund included in the operating expenses line item in subdivision 2 of section 3 of this Act for increasing the number of individuals receiving treatment services under the department's existing contract for methamphetamine treatment services for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 13. ESTIMATED INCOME - LIMIT - HEALTH CARE TRUST FUND.** The estimated income line item in subdivision 2 of section 3 of this Act includes \$525,597 from the health care trust fund. The department of human services expenditures from this fund may not exceed this amount for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 14. LEGISLATIVE INTENT - STATE CHILDREN'S HEALTH INSURANCE PROGRAM.** The funding appropriated in subdivision 2 of section 3 of this Act includes \$453,000 for a state children's health insurance program outreach program. It is the intent of the sixtieth legislative assembly that the department of human services provide this funding to an entity that focuses on statewide community health care initiatives and issues.

**SECTION 15.** A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

**Children with special health care needs - Program administration.** The state department of health shall administer programs for children with special health care needs as may be necessary to conform to title 5, part 2, of the federal Social Security Act, as amended through July 1, 2007 [Pub. L. 74-271; 49 Stat. 620; 42 U.S.C. 701 et seq.], including providing services and assistance to children with special health care needs and their families and developing and operating clinics for the identification, screening, referral, and treatment of children with special health care needs.

**SECTION 16.** Chapter 23-39 of the North Dakota Century Code is created and enacted as follows:

**23-39-01. Definitions.** In this chapter unless the context or subject matter otherwise requires:

1. "County agency" means the county social service boards in this state.
2. "Department" means the state department of health.

**23-39-02. Administration of services for children with special health care needs.** Services for children with special health care needs must be administered by the department in conformity with title 5, part 2, of the federal Social Security Act, as amended through July 1, 2007 [Pub. L. 74-271; 49 Stat. 620; 42 U.S.C. 701 et seq.].

**23-39-03. Duties of the department.** The department, in administering this chapter, shall:

1. Cooperate with the federal government in the development of plans and policies for services for children with special health care needs.
2. Adopt rules and take any necessary action to entitle the state to receive aid from the federal government for services for children with special health care needs in conformity with title 5, part 2, of the federal Social Security Act and its amendments.
3. Take action, give directions, and adopt rules to carry out the provisions of this chapter, including the adoption and application of suitable standards and procedures to ensure uniform and equitable treatment of all applicants for services for children with special health care needs.
4. Cooperate with the federal government in matters of mutual concern pertaining to services to children with special health care needs, including the adoption of methods of administration found necessary by the federal government for the efficient operation of the plan for assistance.
5. Provide necessary qualified employees and representatives.
6. Establish and enforce a merit system as may be required under the federal Social Security Act, as amended through July 1, 2007 [Pub. L. 74-271; 49 Stat. 620; 42 U.S.C. 701 et seq.].
7. Make reports in the form and containing the information the federal government requires and comply with the provisions, rules, and

regulations the federal government makes to assure the correctness and verification of a report.

8. Publish a biennial report and any interim reports necessary.
9. Provide medical food and low-protein modified food products to individuals with phenylketonuria or maple syrup urine disease under chapter 25-17.
10. Establish eligibility criteria for services under this chapter at one hundred eighty-five percent of the poverty line, except for criteria relating to Russell-Silver syndrome, phenylketonuria, or maple syrup urine disease treatment services for which income is not to be considered when determining eligibility. For purposes of this chapter, "poverty line" has the same meaning as defined in section 50-29-01.

**23-39-04. Birth report of child with special health care needs made to department.** Within three days after the birth in this state of a child born with a visible congenital deformity, the licensed maternity hospital or home in which the child was born, or the legally qualified physician or other person in attendance at the birth of the child outside of a maternity hospital, shall furnish the department a report concerning the child with the information required by the department.

**23-39-05. Birth report of child with special health care needs - Use - Confidential.** The information contained in the report furnished to the department under section 23-39-04 concerning a child with a visible congenital deformity may be used by the department for the care and treatment of the child pursuant to this chapter. The report is confidential and is solely for the use of the department in the performance of its duties. The report is not open to public inspection nor considered a public record.

**23-39-06. Duties of county agencies.** A county agency shall:

1. Cooperate with the department in administering this chapter in its county subject to rules adopted by the department.
2. Make surveys and reports regarding children with special health care needs in the various counties to the department when the department directs and in the way the department directs.
3. Provide for the transportation of a child with special health care needs to a clinic for medical examination and to a hospital or a clinic for treatment.

**23-39-07. Russell-Silver syndrome - Services - Definitions.**

1. The department shall provide payment of a maximum of fifty thousand dollars per child per biennium for medical food and growth hormone treatment at no cost to individuals through age eighteen who have been diagnosed with Russell-Silver syndrome, regardless of income. If the department provides an individual with services under this section, the department may seek reimbursement from any governmental program that provides coverage to that individual for the services provided. The parent of an individual receiving services under this section shall obtain any health insurance available to the parent on a group basis or through



an employer or union, and that insurance must be the primary payer before payment under this program.

2. For purposes of this section:

- a. "Growth hormone treatment" means a drug prescribed by a physician or other licensed practitioner for the long-term treatment of growth failure, the supplies necessary to administer the drug, one out-of-state physician visit per year to obtain expert consultation for the management of Russell-Silver syndrome, appropriate in-state physician visits, and the travel expenses associated with physician visits for the child and one parent.
- b. "Medical food" means a formula that is intended for the dietary treatment of a disease or condition for which nutritional requirements are established by medical evaluation and is formulated to be consumed or administered under the direction of a physician as well as any medical procedure and supplies necessary for assimilation of the formula.

**SECTION 17. AMENDMENT.** Section 25-17-02 of the North Dakota Century Code is amended and reenacted as follows:

**25-17-02. Rulemaking requirement.** The state health council ~~and the department of human services~~ shall adopt rules necessary to implement this chapter.

**SECTION 18. AMENDMENT.** Section 25-17-03 of the North Dakota Century Code is amended and reenacted as follows:

**25-17-03. Treatment for positive diagnosis - Registry of cases.**

- 4- The state department of health shall:
  - a- 1. Follow up with attending physicians cases with positive tests for metabolic diseases in order to determine the exact diagnosis.
  - b- 2. Refer every diagnosed case of a metabolic disease to a qualified health care provider for necessary treatment of the metabolic disease.
  - e- 3. Maintain a registry of cases of metabolic diseases.
- 2- ~~The department of human services, as a program provided under chapter 50-10, shall:~~
  - a- 4. Provide medical food at no cost to males under age twenty-two and females under age forty-five who are diagnosed with phenylketonuria or maple syrup urine disease, regardless of income. If treatment services under this subsection are provided to an individual by the department, the department may seek reimbursement from any government program that provides coverage to that individual for the treatment services provided by the department.
  - b- 5. Offer for sale at cost medical food to females age forty-five and over and to males age twenty-two and over who are diagnosed with phenylketonuria or maple syrup urine disease, regardless of income.

These individuals are responsible for payment to the department for the cost of medical food.

- e- 6. Provide low-protein modified food produces, if medically necessary as determined by a qualified health care provider, to females under age forty-five and males under age twenty-two who are receiving medical assistance and are diagnosed with phenylketonuria or maple syrup urine disease.

**SECTION 19. AMENDMENT.** Section 50-06-01.2 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-01.2. Department of human services - Creation.** The ~~North Dakota~~ department of human services is ~~hereby~~ created to assume the functions, powers, and duties of the following governmental agencies:

1. The social service board of North Dakota, including all of the statutory authority and responsibilities set out in chapters 27-21, 50-06, 50-06.1, 50-09, ~~50-10~~, 50-11, 50-11.1, 50-12, 50-18, 50-19, 50-21, 50-24.1, and 50-25.1.
2. The mental health and retardation division of the state department of health as established by chapter 25-10, including the state hospital and any other institutions under the jurisdiction of the mental health and retardation division.
3. The division of alcoholism and drug abuse of the state department of health as established by chapter 54-38.
4. The state council on developmental disabilities as established by section 25-01-01.1.

**SECTION 20. AMENDMENT.** Section 50-06-01.4 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-01.4. Structure of the department.** The department includes the state hospital; the regional human service centers; a vocational rehabilitation unit; and other units or offices and administrative and fiscal support services as the executive director determines necessary. The department must be structured to promote efficient and effective operations and, consistent with fulfilling its prescribed statutory duties, shall act as the official agency of the state in the discharge of the following functions not otherwise by law made the responsibility of another state agency:

1. Administration of programs for children and families, including adoption services and the licensure of child-placing agencies, foster care services and the licensure of foster care arrangements, child protection services, children's trust fund, state youth authority, licensure of day care homes and facilities, services to unmarried parents, refugee services, in-home community-based services, and administration of the interstate compacts on the placement of children and juveniles.
2. Administration of programs for persons with developmental disabilities, including licensure of facilities and services, and the design and implementation of a community-based service system for persons in need of habilitation.

3. Administration of aging service programs, including nutrition, transportation, advocacy, social, ombudsman, recreation, and related services funded under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.], home and community-based services, licensure of adult family care homes, committee on aging, and the fund matching program for city or county tax levies for senior citizen activities and services.
4. Administration of mental health programs, including planning and implementing preventive, consultative, diagnostic, treatment, and rehabilitative services for persons with mental or emotional disorders and psychiatric conditions.
5. ~~Administration of programs for crippled children, including the provision of services and assistance to crippled children and their families, and the development and operation of clinics for the identification, screening, referral, and treatment of crippled children.~~
6. Administration of alcohol and drug abuse programs, including establishing quality assurance standards for the licensure of programs, services, and facilities, planning and coordinating a system of prevention, intervention, and treatment services, providing policy leadership in cooperation with other public and private agencies, and disseminating information to local service providers and the general public.
7. 6. Administration of economic assistance programs, including temporary assistance for needy families, food stamps, fuel assistance, child support enforcement, refugee assistance, work experience, work incentive, and quality control.
8. 7. Administration of medical service programs, including medical assistance for needy persons, early and periodic screening, diagnosis and treatment, utilization control, and claims processing.

The executive director shall consult with and maintain a close working relationship with the state department of health; with the department of corrections and rehabilitation and the superintendents of the school for the deaf and the school for the blind to develop programs for developmentally disabled persons; and with the superintendent of public instruction to maximize the use of resource persons in regional human service centers in the provision of special education services. The executive director shall also maintain a close liaison with county social service agencies.

**SECTION 21. AMENDMENT.** Section 50-06-24 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-24. Guardianship services.** The department of human services may create and coordinate a unified system for the provision of guardianship services to vulnerable adults who are ineligible for developmental disabilities case management services. The system must include a base unit funding level at the same level as developmental disability corporate guardianship rates, provider standards, staff competency requirements, ~~the use of an emergency funding procedure to cover the costs of establishing needed guardianships~~, and guidelines and training for guardians. ~~The department shall require that the contracting entity develop and maintain a system of volunteer guardians to serve the state.~~ The department shall

adopt rules for guardianship services to vulnerable adults which are consistent with chapters 30.1-26, 30.1-28, and 30.1-29.

**SECTION 22. AMENDMENT.** Section 50-24.4-15 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.4-15. Property-related costs.**

1. The department shall include in the ratesetting system for nursing homes a payment mechanism for the use of real and personal property which provides for depreciation and related interest costs. The property cost payment mechanism must:
  - a. Recognize the valuation basis of assets acquired in a bona fide transaction as an ongoing operation after July 1, 1985, limited to the lowest of:
    - (1) Purchase price paid by the purchaser;
    - (2) Fair market value at the time of sale; or
    - (3) Seller's cost basis, increased by one-half of the increase in the consumer price index for all urban consumers (United States city average) from the date of acquisition by the seller to the date of acquisition by the buyer, less accumulated depreciation.
  - b. Recognize depreciation on land improvements, buildings, and fixed equipment acquired, as an ongoing operation over the estimated useful remaining life of the asset as determined by a qualified appraiser.
  - c. Recognize depreciation on movable equipment acquired as an ongoing operation after August 1, 1995, over a composite remaining useful life.
  - d. Provide for an interest expense limitation determined by the department and established by rule.
  - e. Establish a per bed property cost limitation considering single and double occupancy construction.
  - f. Recognize increased lease costs of a nursing home operator to the extent the lessor has incurred increased costs related to the ownership of the facility, the increased costs are charged to the lessee, and the increased costs would be allowable had they been incurred directly by the lessee.
  - g. Recognize any mandated costs, fees, or other moneys paid to the attorney general through transactions under sections 10-33-144 through 10-33-149.
2. For rate years beginning after December 31, 2003, the limitations of paragraph 3 of subdivision a of subsection 1 do not apply to the valuation basis of assets purchased between July 1, 1985, and July 1,

2000. The provisions of this subsection may not be applied retroactively to any rate year before July 1, 2005.

3. For rate years beginning after December 31, 2007, the limitations of subdivision e of subsection 1 do not apply to the valuation basis of assets acquired as a result of a natural disaster before December 31, 2006. The provisions of this subsection may not be applied retroactively to any rate year before January 1, 2008.

**SECTION 23. REPEAL.** Chapter 50-10 of the North Dakota Century Code is repealed.

Approved May 2, 2007

Filed May 3, 2007

**CHAPTER 40****SENATE BILL NO. 2013**

(Appropriations Committee)  
(At the request of the Governor)

**PUBLIC INSTRUCTION**

AN ACT to provide an appropriation for defraying the expenses of the department of public instruction, the school for the deaf, North Dakota vision services - school for the blind, and the state library; to provide an appropriation relating to teachers' retirement contributions; to provide for the distribution of special education payments; to provide for transfers; to provide for a legislative council study; to provide for legislative intent; to provide an exemption; to amend and reenact section 15.1-02-02 of the North Dakota Century Code, section 28 of chapter 167 of the 2005 Session Laws, and section 52 of Senate Bill No. 2200, as approved by the sixtieth legislative assembly, relating to the salary of the superintendent of public instruction, contingent distributions of per student payments, and teacher compensation payments; and to declare an emergency.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the department of public instruction, the school for the deaf, North Dakota vision services - school for the blind, and the state library in section 3 of this Act as follows:

## Subdivision 1.

## DEPARTMENT OF PUBLIC INSTRUCTION

Salaries and wages	\$10,056,952
Operating expenses	14,892,308
Grants - State school aid	484,053,759
Grants - Special education contracts	15,500,000
Grants - Transportation	33,500,000
Grants - Tuition apportionment	71,600,000
Grants - Special education	37,000,000
Grants - Revenue supplement	5,000,000
Grants - Teacher compensation	50,912,120
Grants - Other grants	207,999,083
Reorganization bonuses	759,000
JPA incentives	1,000,000
Transportation efficiency	30,000
National board certification	40,000
Total all funds - Base level	\$932,343,222
Less estimated income - Base level	295,899,635
Total general fund - Base level	\$636,443,587

## Subdivision 2.

## STATE LIBRARY

Salaries and wages	\$2,232,082
Operating expenses	1,381,772
Grants	1,552,500
Total all funds - Base level	\$5,166,354

Less estimated income - Base level	<u>1,659,272</u>
Total general fund - Base level	<u>\$3,507,082</u>

## Subdivision 3.

## SCHOOL FOR THE DEAF

Salaries and wages	\$5,035,602
Operating expenses	1,377,265
Capital assets	<u>279,495</u>
Total all funds - Base level	<u>\$6,692,362</u>
Less estimated income - Base level	<u>1,327,265</u>
Total general fund - Base level	<u>\$5,365,097</u>

## Subdivision 4.

## VISION SERVICES - SCHOOL FOR THE BLIND

Salaries and wages	\$2,696,280
Operating expenses	607,306
Capital assets	<u>67,470</u>
Total all funds - Base level	<u>\$3,371,056</u>
Less estimated income - Base level	<u>846,447</u>
Total general fund - Base level	<u>\$2,524,609</u>
Total general fund - Section 1	\$647,840,375
Total special funds - Section 1	\$299,732,619
Total all funds - Section 1	<u>\$947,572,994</u>

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS**

**INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the department of public instruction, the school for the deaf, North Dakota vision services - school for the blind, and the state library which are included in the appropriation in section 3 of this Act as follows:

## Subdivision 1.

## DEPARTMENT OF PUBLIC INSTRUCTION

Salaries and wages	\$1,370,102
Operating expenses	4,845,986
Grants - State school aid	242,112,120
Grants - Special education contracts	2,000,000
Grants - Tuition apportionment	(71,600,000)
Grants - Special education	(37,000,000)
Grants - Revenue supplement	(5,000,000)
Grants - Teacher compensation	(50,912,120)
Grants - Other grants	19,702,723
Reorganization bonuses	(759,000)
JPA incentives	<u>(1,000,000)</u>
Total all funds - Adjustments/enhancements	<u>\$103,759,811</u>
Less estimated income - Adjustments/enhancements	<u>29,776,672</u>
Total general fund - Adjustments/enhancements	<u>\$73,983,139</u>

## Subdivision 2.

## STATE LIBRARY

Salaries and wages	\$398,958
Operating expenses	96,000
Grants	<u>200,000</u>
Total all funds - Adjustments/enhancements	<u>\$694,958</u>
Less estimated income - Adjustments/enhancements	<u>222,328</u>
Total general fund - Adjustments/enhancements	<u>\$472,630</u>

## Subdivision 3.

## SCHOOL FOR THE DEAF

Salaries and wages	(\$272,221)
Operating expenses	137,018
Capital assets	(129,495)
Total all funds - Adjustments/enhancements	(\$264,698)
Less estimated income - Adjustments/enhancements	(288,103)
Total general fund - Adjustments/enhancements	\$23,405

## Subdivision 4.

## VISION SERVICES - SCHOOL FOR THE BLIND

Salaries and wages	\$281,139
Operating expenses	33,492
Capital assets	74,630
Total all funds - Adjustments/enhancements	\$389,261
Less estimated income - Adjustments/enhancements	(2,330)
Total general fund - Adjustments/enhancements	\$391,591
Total general fund - Section 2	\$74,870,765
Total special funds - Section 2	\$29,708,567
Total all funds - Section 2	\$104,579,332

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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 public instruction, the school for the deaf, North Dakota vision services - school for the blind, and the state library for the purpose of defraying the expenses of those agencies, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

## Subdivision 1.

## DEPARTMENT OF PUBLIC INSTRUCTION

Salaries and wages	\$11,427,054
Operating expenses	19,738,294
Grants - State school aid	726,165,879
Grants - Special education contracts	17,500,000
Grants - Transportation	33,500,000
Grants - Other grants	227,701,806
Transportation efficiency	30,000
National board certification	40,000
Total all funds	\$1,036,103,033
Less estimated income	325,676,307
Total general fund appropriation	\$710,426,726

## Subdivision 2.

## STATE LIBRARY

Salaries and wages	\$2,631,040
Operating expenses	1,477,772
Grants	1,752,500
Total all funds	\$5,861,312
Less estimated income	1,881,600
Total general fund appropriation	\$3,979,712

## Subdivision 3.

## SCHOOL FOR THE DEAF

Salaries and wages	\$4,763,381
Operating expenses	1,514,283



Capital assets	150,000
Total all funds	\$6,427,664
Less estimated income	1,039,162
Total general fund appropriation	\$5,388,502

## Subdivision 4.

## VISION SERVICES - SCHOOL FOR THE BLIND

Salaries and wages	\$2,977,419
Operating expenses	640,798
Capital assets	142,100
Total all funds	\$3,760,317
Less estimated income	844,117
Total general fund appropriation	\$2,916,200
Total general fund appropriation - Section 3	\$722,711,140
Total estimated income appropriation - Section 3	\$329,441,186
Total all funds appropriation - Section 3	\$1,052,152,326
Grand total general fund appropriation - S.B. 2013	\$722,725,758
Grand total special funds appropriation - S.B. 2013	\$329,449,048
Grand total all funds appropriation - S.B. 2013	\$1,052,174,806

**SECTION 4. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from other funds derived from federal funds and other income, to the following departments for the purpose of funding the additional employer retirement contribution for teachers' fund for retirement members required by Senate Bill No. 2046, as approved by the sixtieth legislative assembly, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

DEPARTMENT	GENERAL FUND	OTHER FUNDS	TOTAL
Division of independent study		\$7,560	\$7,560
School for the deaf	\$4,760		4,760
North Dakota vision services - School for the blind	2,600		2,600
Department of corrections and rehabilitation	7,258	302	7,560
Total	\$14,618	\$7,862	\$22,480

**SECTION 5. APPROPRIATION.** There is appropriated from special funds derived from federal funds and other income the sum of \$22,000,000, or so much of the sum as may be necessary, to the superintendent of public instruction for operating expenses and for providing grants for the period beginning with the effective date of this Act and ending June 30, 2007.

**SECTION 6. APPROPRIATION - TUITION APPORTIONMENT.** The sum of \$76,200,000, included in the grants - state school aid line item in subdivision 1 of section 3 of this Act, is from the state tuition fund in the state treasury. Any additional amount in the state tuition fund that becomes available for distribution to public schools is appropriated to the department of public instruction for that purpose for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 7. STATE SCHOOL AID AND SPECIAL EDUCATION EXPENDITURE AUTHORITY.** The superintendent of public instruction may expend funds included in the grants - state school aid and grants - special education contracts line items in subdivision 1 of section 3 of this Act in payment of grants for

educational services that were due in the 2005-07 biennium but which were not filed, claimed, or properly supported by the education provider until after June 30, 2007.

**SECTION 8. DISTRIBUTION OF SPECIAL EDUCATION AID.** The sum of \$400,000, included in the grants - state school aid line item in subdivision 1 of section 3 of this Act, must be distributed to reimburse school districts or special education units for gifted and talented programs upon the submission of an application that is approved in accordance with guidelines adopted by the superintendent of public instruction. The superintendent of public instruction shall encourage cooperative efforts for gifted and talented programs among school districts and special education units. State school aid payments for special education must be reduced by the amount of matching funds required to be paid by school districts or special education units for students participating in the medicaid program. Special education funds equal to the amount of the matching funds required to be paid by the school district or special education unit must be paid by the superintendent of public instruction to the department of human services on behalf of the school district or unit.

**SECTION 9. INDIRECT COST ALLOCATION.** Notwithstanding section 54-44.1-15, the department of public instruction may deposit indirect cost recoveries in its operating account.

**SECTION 10. STATE AID TO PUBLIC LIBRARIES.** The line item entitled grants in subdivision 2 of section 3 of this Act includes \$1,200,000 for aid to public libraries, of which no more than one-half is to be expended during the fiscal year ending June 30, 2008.

**SECTION 11. LINE ITEM TRANSFER AUTHORITY.** Notwithstanding section 54-16-04, the director of the office of management and budget may make transfers of funds up to \$240,000 from the salaries and wages line item to the operating expenses and capital assets line items in subdivision 3 of section 3 of this Act for the school for the deaf as may be requested by the superintendent of public instruction for increased instructional costs and extraordinary repair needs.

**SECTION 12. FEES DEPOSITED IN VISION SERVICES - SCHOOL FOR THE BLIND OPERATING FUND.** Any moneys included in the estimated income line item in subdivision 4 of section 3 of this Act, collected for subscription fees or braille fees, must be deposited in the North Dakota vision services - school for the blind operating fund in the state treasury and may be spent subject to appropriation by the legislative assembly.

**SECTION 13. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The total general fund appropriation line item in section 3 of this Act includes \$100,000 for the one-time funding item identified in this section. This amount is not a part of the agency's base budget to be used in preparing the 2009-11 executive budget. The school for the deaf shall report to the appropriations committees of the sixty-first legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2007, and ending June 30, 2009.

Deferred maintenance - School for the deaf \$100,000

**SECTION 14. LEGISLATIVE COUNCIL STUDY - SERVICES TO STUDENTS WHO ARE DEAF OR HEARING-IMPAIRED.** The legislative council shall consider studying, during the 2007-08 interim, the provision of services to children and adults who are deaf or hearing-impaired, including the role of the North

Dakota school for the deaf in the provision of educational and rehabilitative services, the short-term and long-term viability of existing state facilities, and alternative approaches that might enhance the scope and breadth of service availability. The study, if conducted, must include the feasibility of combining the administration and delivery of services of the school for the deaf with other area school districts, educational associations governed by joint powers agreements, special education units, and North Dakota vision services - school for the blind. The study should examine alternative uses for the buildings on the school for the deaf campus beyond the scope of the school's present mission. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 15. LEGISLATIVE INTENT - REPORT TO THE SIXTY-FIRST LEGISLATIVE ASSEMBLY.** It is the intent of the legislative assembly that the school for the deaf collaborate with Lake Region state college on the college's wind energy project and determine the feasibility of the school for the deaf accessing any available energy, including identifying any related costs. The school for the deaf should provide a report on the status of this collaboration to the appropriations committees of the sixty-first legislative assembly.

**SECTION 16. ADULT EDUCATION PER STUDENT FUNDING STUDY.** The commission on education improvement shall consider studying, during the 2007-08 interim, changes to the state school aid formula to provide per student payments to school districts offering an adult education program.

**SECTION 17. EXEMPTION.** Any amounts distributed pursuant to section 18 of this Act that will not be expended before June 30, 2007, are not subject to the provisions of section 54-44.1-11 and may be expended during the biennium beginning July 1, 2007, and ending June 30, 2009, for the purposes provided in section 18 of this Act.

**SECTION 18. AMENDMENT.** Section 28 of chapter 167 of the 2005 Session Laws is amended and reenacted as follows:

**SECTION 28. CONTINGENCY.** If any moneys appropriated for per student payments and transportation payments in the grants - state school aid line item in House Bill No. 1013, as approved by the fifty-ninth legislative assembly, remain after payment of all statutory obligations for per student and transportation payments during the biennium beginning July 1, 2005, and ending June 30, 2007, and after the superintendent of public instruction has fulfilled any directives contained in section 27 of this Act, the superintendent shall distribute the remaining moneys as follows:

1. The superintendent of public instruction shall use the first \$450,000, or so much of that amount as may be necessary, to provide additional payments to school districts serving English language learners in accordance with section 15.1-27-12.
2. The superintendent of public instruction shall use the next \$1,000,000, or so much of that amount as may be necessary, for the purpose of providing additional ~~per student~~ payments to school districts participating in eligible educational associations in accordance with section 32 of this Act.
  - a. The superintendent of public instruction shall distribute during the 2007-09 biennium \$45,000, or so much of that amount as may be

necessary, as grants in the amount of \$5,000 each to any educational association that commits to the development and implementation of a teacher mentoring program for first-year, second-year, and third-year teachers employed by school districts participating in the association. If any of this amount remains after meeting the requirements of this subdivision, the superintendent shall distribute those funds as additional per student payments on a prorated basis to school districts participating in educational associations.

- b. The superintendent of public instruction shall distribute \$955,000, or so much of that amount as may be necessary, as additional per student payments to school districts participating in eligible educational associations as provided in section 32 of chapter 167 of the 2005 Session Laws.
3. The superintendent of public instruction shall use the next \$600,000, or so much of that amount as may be necessary, to provide for increases over the established baselines in the minimum percentage of state aid payable to a district per weighted student unit during the 2007-09 biennium. If any of this amount remains after meeting the requirements of this subsection, the superintendent shall distribute that remaining amount as additional per student payments on a prorated basis according to the latest available average daily membership of each school district.
4. The superintendent of public instruction shall use the next \$2,000,000, or so much of that amount as may be necessary, for the purpose of providing additional transportation grants to school districts as provided in Senate Bill No. 2200, as approved by the sixtieth legislative assembly. If any of this amount remains after meeting the requirements of this subsection, the superintendent shall distribute that remaining amount as per student payments on a prorated basis according to the latest available average daily membership of each school district.
5. a. The superintendent of public instruction shall use the next \$1,000,000, or so much of that amount as may be necessary, for the purpose of providing payments to school districts that are members of regional education associations, for the biennium beginning July 1, 2007, and ending June 30, 2009.
  - b. Each year of the biennium, the superintendent of public instruction shall distribute fifty percent of the payments under this subsection to the school districts that are members of regional education associations on a per student basis. The superintendent shall make the distribution at the same time and in the same manner as other state aid payments under section 15.1-27-01.
6. The superintendent of public instruction shall use the next \$30,000, or so much of that amount as may be necessary, for the purpose of providing a grant to the division of independent study for enhancing civic education.
7. The superintendent of public instruction shall use the next \$15,000, or so much of that amount as may be necessary, for the purpose of

providing a one-time grant to the North Dakota museum of art for enhancing the snow country prisons travel exhibit.

8. The superintendent of public instruction shall use the next \$200,000, or so much of that amount as may be necessary, to pay for the services of professionals and experts with whom the commission on education improvement contracts, during the 2007-08 interim, for assistance with its study of educational adequacy. If any of this amount remains after meeting the requirements of this subsection, the superintendent shall distribute that remaining amount as additional per student payments on a prorated basis according to the latest available average daily membership of each school district.
9. The superintendent of public instruction shall use the next \$77,000, or so much of that amount as may be necessary, for providing funding to the education standards and practices board for providing payments to recipients of national board certification and scholarships to individuals seeking national board certification in accordance with Senate Bill No. 2057, as approved by the sixtieth legislative assembly.
10. The superintendent of public instruction shall use the next \$200,000, or so much of that amount as may be necessary, for the purpose of providing additional payments to school districts offering an adult education program during the 2005-07 biennium.
11. The superintendent of public instruction shall use the next \$400,000, or so much of that amount as may be necessary, to purchase and distribute to school districts automated external defibrillators. If any of this amount remains after meeting the requirements of this subsection, the superintendent shall distribute that remaining amount as additional per student payments on a prorated basis according to the latest available average daily membership of each school district.
12. The superintendent of public instruction shall use the next \$395,000, or so much of that amount as may be necessary, for the purpose of providing a grant to the north central council of school television for licensing of education television programs for classroom use by North Dakota elementary and secondary schools, assisting with the North Dakota studies project, and other operating expenses.
13. The superintendent of public instruction shall use the next \$500,000, or so much of that amount as may be necessary, for the purpose of funding the rewrite of the state school aid computer system. If any of this amount remains after meeting the requirements of this subsection, the superintendent shall distribute that remaining amount as additional per student payments on a prorated basis according to the latest available average daily membership of each school district.
14. The superintendent of public instruction shall use the next \$650,000, or so much of that amount as may be necessary, for the purpose of funding the rewrite of the teacher licensure application used by the superintendent of public instruction and the education standards and practices board. The education standards and practices board shall pay the remaining \$80,000 of the anticipated total project cost. If any of this amount remains after meeting the requirements of this subsection, the superintendent shall distribute that remaining amount as additional per

student payments on a prorated basis according to the latest available average daily membership of each school district.

15. The superintendent of public instruction shall use the next \$25,748, or so much of that amount as may be necessary, for the purpose of reimbursing eligible school districts that received reduced amounts of state aid. For the purposes of this subsection, an eligible school district is one that received a reduction in state aid during the 2005-07 biennium because the district's general fund levy fell below one hundred forty mills as the result of an accounting oversight.
16. a. The superintendent of public instruction shall use the next \$90,000, or so much of that amount as may be necessary, for the purpose of providing grants in the amount of \$1,000 to North Dakota residents who:
  - (1) Are licensed to teach by the education standards and practices board;
  - (2) Have taught in this state during each of the last five school years; and
  - (3) Are enrolled in either a master of education program in educational leadership or a program leading to a specialist diploma in educational leadership.
- b. If any of this amount remains after meeting the requirements of this subsection, the superintendent of public instruction shall distribute that amount as additional per student payments on a prorated basis, according to the latest available average daily membership of each school district.
17. The superintendent of public instruction shall use the next \$50,000, or so much of that amount as may be necessary, for the purpose of providing a grant for the Atlantik-Brucke teacher exchange program.
18. The superintendent of public instruction shall use the remainder of the moneys to provide additional per student payments on a prorated basis according to the latest available average daily membership of each school district.

**SECTION 19. AMENDMENT.** Section 52 of Senate Bill No. 2200, as approved by the sixtieth legislative assembly, is amended and reenacted as follows:

**SECTION 52. USE OF NEW MONEY - TEACHER COMPENSATION INCREASES - REPORTS TO LEGISLATIVE COUNCIL.**

1. During the 2007-09 biennium, the board of each school district shall use an amount equal to at least seventy percent of all new money received by the district for per student payments to increase the compensation paid to teachers and to provide compensation to teachers who begin employment with the district on or after July 1, 2007.
2. For purposes of this section, the superintendent of public instruction shall calculate the amount of new money received by a district during the 2007-09 biennium by:

- a. Determining the total amount of state dollars received by each district during the 2005-07 biennium as per student payments, tuition apportionment payments, special education per student payments, ~~and~~ English language learner payments, extended educational program payments, summer education program payments, migrant summer program payments, payments for home-based education programs monitored by the school district, and teacher compensation payments;
  - b. Determining the total amount of state dollars received by each district during the 2007-09 biennium as per student payments, provided that neither equity payments under section 15.1-27-11 nor contingency distributions are to be included in the total; and
  - c. Subtracting the amount arrived at under subdivision a from the amount arrived at under subdivision b.
3. School districts providing educational services under a cooperative agreement approved by the superintendent of public instruction must, for purposes of this section, be treated as a single district.
  4.
    - a. The provisions of this section do not apply to a school district if the board of the school district, after a public hearing at which public testimony and documentary evidence are accepted, determines in its discretion and by an affirmative vote of two-thirds of the members of the board that complying with the provisions of subsection 1 would place the school district in the position of having insufficient fiscal resources to meet the school district's other obligations.
    - b. Within ten days of the vote required by subdivision a, the school board shall notify the superintendent of public instruction of its action and shall file a report detailing the grounds for its determination and action.
    - c. The superintendent of public instruction shall report all notices received under this subsection to an interim committee designated by the legislative council.

**SECTION 20. AMENDMENT.** Section 15.1-02-02 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-02-02. Salary.** The annual salary of the superintendent of public instruction is ~~eighty~~ eighty-seven thousand ~~five~~ one hundred ~~thirty-one~~ three dollars through June 30, ~~2006~~ 2008, and ~~eighty-three~~ ninety thousand ~~seven~~ five hundred ~~fifty-three~~ eighty-seven dollars thereafter.

**SECTION 21. EMERGENCY.** Sections 5 and 18 of this Act are declared to be an emergency measure.

Approved May 2, 2007  
Filed May 3, 2007

**CHAPTER 41****SENATE BILL NO. 2014**

(Appropriations Committee)  
(At the request of the Governor)

**COMMITTEE ON PROTECTION AND ADVOCACY**

AN ACT to provide an appropriation for defraying the expenses of the committee on protection and advocacy.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the committee on protection and advocacy in section 3 of this Act as follows:

Total all funds - Base level	\$3,720,979
Less estimated income - Base level	<u>2,908,886</u>
Total general fund - Base level	\$812,093

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the committee on protection and advocacy which are included in the appropriation in section 3 of this Act as follows:

Total all funds - Adjustments/enhancements	\$335,709
Less estimated income - Adjustments/enhancements	<u>233,892</u>
Total general fund - Adjustments/enhancements	\$101,817

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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 committee on protection and advocacy for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Total all funds	\$4,056,688
Less estimated income	<u>3,142,778</u>
Total general fund appropriation	\$913,910

Approved May 1, 2007  
Filed May 2, 2007



**CHAPTER 42****SENATE BILL NO. 2016**

(Appropriations Committee)  
(At the request of the Governor)

**ADJUTANT GENERAL**

AN ACT to provide an appropriation for defraying the expenses of the office of the adjutant general; to provide for a transfer; to provide statements of legislative intent; to provide for a legislative council study; and to amend and reenact section 6 of chapter 17 of the 2005 Session Laws, relating to the payment of adjusted compensation to veterans.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the office of the adjutant general in section 3 of this Act as follows:

## Subdivision 1.

## NATIONAL GUARD

Salaries and wages	\$3,859,417
Operating expenses	3,213,528
Capital assets	870,000
Grants	5,329,514
Civil air patrol	156,258
Tuition and enlistment compensation	2,007,500
Air guard contract	7,170,777
Army guard contract	24,981,462
Veterans' cemetery	290,571
Total all funds - Base level	<u>\$47,879,027</u>
Less estimated income - Base level	31,433,798
Total general fund - Base level	<u>\$16,445,229</u>

## Subdivision 2.

## DEPARTMENT OF EMERGENCY SERVICES

Salaries and wages	\$6,626,638
Salary and wages pool	213,493
Operating expenses	3,325,844
Capital assets	4,957,923
Grants	46,962,054
State radio migration	900,000
Total all funds - Base level	<u>\$62,985,952</u>
Less estimated income - Base level	57,870,280
Total general fund - Base level	<u>\$5,115,672</u>
Grand total general fund - Section 1	\$21,560,901
Grand total special funds - Section 1	\$89,304,078
Grand total all funds - Section 1	<u>\$110,864,979</u>

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the office of the adjutant general which are included in the appropriation in section 3 of this Act as follows:

Subdivision 1.	NATIONAL GUARD	
Salaries and wages		\$607,129
Operating expenses		685,300
Capital assets		60,667
Grants		(4,880,000)
Civil air patrol		3,905
Tuition, recruiting, and retention		400,000
Air guard contract		2,309,954
Army guard contract		41,452,401
Veterans' cemetery		<u>64,351</u>
Total all funds - Adjustments/enhancements		\$40,703,707
Less estimated income - Adjustments/enhancements		<u>43,369,035</u>
Total general fund - Adjustments/enhancements		(\$2,665,328)

Subdivision 2.	DEPARTMENT OF EMERGENCY SERVICES	
Salaries and wages		\$1,167,484
Salary and wages pool		(213,493)
Operating expenses		503,556
Capital assets		(3,432,576)
Grants		(6,167,419)
State radio migration		(900,000)
Radio communications		<u>980,000</u>
Total all funds - Adjustments/enhancements		(\$8,062,448)
Less estimated income - Adjustments/enhancements		<u>(10,978,721)</u>
Total general fund - Adjustments/enhancements		\$2,916,273
Grand total general fund - Section 2		\$250,945
Grand total special funds - Section 2		\$32,390,314
Grand total all funds - Section 2		\$32,641,259

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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 office of the adjutant general for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Subdivision 1.	NATIONAL GUARD	
Salaries and wages		\$4,466,546
Operating expenses		3,898,828
Capital assets		930,667
Grants		449,514
Civil air patrol		160,163
Tuition, recruiting, and retention		2,407,500
Air guard contract		9,480,731
Army guard contract		66,433,863
Veterans' cemetery		<u>354,922</u>
Total all funds		\$88,582,734
Less estimated income		<u>74,802,833</u>
Total general fund appropriation		\$13,779,901

## Subdivision 2.

## DEPARTMENT OF EMERGENCY SERVICES

Salaries and wages	\$7,794,122
Operating expenses	3,829,400
Capital assets	1,525,347
Grants	40,794,635
Radio communications	<u>980,000</u>
Total all funds	\$54,923,504
Less estimated income	<u>46,891,559</u>
Total general fund appropriation	\$8,031,945
Grand total general fund - S.B. 2016	\$21,811,846
Grand total special funds - S.B. 2016	\$121,694,392
Grand total all funds - S.B. 2016	\$143,506,238

**SECTION 4. VETERANS' CEMETERY MAINTENANCE FUND - APPROPRIATION.** The veterans' cemetery line item in section 3 of this Act includes the sum of \$116,337 from the veterans' cemetery maintenance fund for the operation of the veterans' cemetery. Any additional funds received by the adjutant general and deposited in the veterans' cemetery maintenance fund pursuant to sections 37-03-14 and 39-04-10.10 for the operation of the North Dakota veterans' cemetery are appropriated to the adjutant general for that purpose for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 5. LINE ITEM TRANSFER AUTHORITY - MAINTENANCE AND REPAIRS.** The adjutant general may transfer to the operating expenses and capital assets line items contained in section 3 of this Act up to the sum of \$500,000 from the various other line items contained in section 3 of this Act, as determined necessary by the adjutant general to provide for the maintenance and repair of state-owned armories in this state during the biennium beginning July 1, 2007, and ending June 30, 2009. Any amounts transferred pursuant to this section must be reported to the director of the office of management and budget.

**SECTION 6. LEGISLATIVE INTENT - DEPARTMENT OF EMERGENCY SERVICES ADVISORY COMMITTEE.** It is the intent of the legislative assembly that the adjutant general consider changing the membership of the department of emergency services advisory committee to remove representatives of the information technology department and the infragard and include representatives of the North Dakota healthcare association and North Dakota sheriffs association.

**SECTION 7. LEGISLATIVE INTENT - HOMELAND SECURITY FUNDING.** It is the intent of the legislative assembly that political subdivisions place a greater influence on allocations of federal homeland security funding to emergency medical services and hospitals.

**SECTION 8. LEGISLATIVE COUNCIL STUDY.** The legislative council shall consider studying, during the 2007-08 interim, the department of emergency services, including the division of homeland security and the division of state radio. The study should include a review of the allocation of federal homeland security funding, the operation of state radio, and potential changes to the 911 fee structure to continue salary equity funding provided in the 2007-09 biennium. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 9. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The total general fund

appropriation line item in section 3 of this Act includes \$2,781,970 for the one-time funding items identified in this section. This amount is not part of the agency's base budget to be used in preparing the 2009-11 executive budget. The adjutant general shall report to the appropriations committees of the sixty-first legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2007, and ending June 30, 2009.

Computer-aided dispatch project	\$980,000
Motorola lease purchase payment (general fund portion)	1,084,970
Special assessments	92,000
Deferred maintenance	<u>625,000</u>
Total	\$2,781,970

**SECTION 10. AMENDMENT.** Section 6 of chapter 17 of the 2005 Session Laws is amended and reenacted as follows:

**SECTION 6. EXEMPTION - TRANSFER.** Any unexpended general fund appropriation authority relating to the \$5,000,000 appropriated in section 3 of this Act for the payment of adjusted compensation to veterans is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation must be transferred to the veterans' cemetery trust fund during the biennium beginning July 1, ~~2007~~ 2009, and ending June 30, ~~2009~~ 2011.

Approved May 1, 2007  
 Filed May 2, 2007

**CHAPTER 43****SENATE BILL NO. 2017**

(Appropriations Committee)  
(At the request of the Governor)

**GAME AND FISH DEPARTMENT**

AN ACT to provide an appropriation for defraying the expenses of the game and fish department; to provide for a statement of legislative intent; to provide for a report to the legislative council; to provide for a study; and to declare an emergency.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the game and fish department in section 3 of this Act as follows:

Salaries and wages	\$16,933,000
Operating expenses	9,736,435
Capital assets	2,961,116
Grants	6,164,122
Land habitat and deer depredation	11,227,979
Noxious weed control	350,000
Grants, gifts, and donations	700,000
Nongame wildlife conservation	120,000
Lonetree reservoir	1,528,407
Wildlife services	680,000
Ramp improvements and marina development	<u>800,000</u>
Total special funds - Base level	\$51,201,059

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the game and fish department which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$2,100,535
Operating expenses	1,953,652
Capital assets	323,125
Grants	488,062
Land habitat and deer depredation	1,558,372
Noxious weed control	100,000
Grants, gifts, and donations	(200,000)
Lonetree reservoir	66,306
Recruitment and retention study	30,000
Ramp improvements and marina development	<u>240,000</u>
Total special funds - Adjustments/enhancements	\$6,660,052

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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 for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Salaries and wages	\$19,033,535
Operating expenses	11,690,087
Capital assets	3,284,241
Grants	6,652,184
Land habitat and deer depredation	12,786,351
Noxious weed control	450,000
Grants, gifts, and donations	500,000
Nongame wildlife conservation	120,000
Lonetree reservoir	1,594,713
Wildlife services	680,000
Recruitment and retention study	30,000
Ramp improvements and marina development	1,040,000
Total special funds appropriation	\$57,861,111

**SECTION 4. APPROPRIATION - WILDLIFE SERVICES - AGRICULTURE COMMISSIONER.** There is appropriated from special funds the sum of \$130,000, or so much of the sum as may be necessary, to the game and fish department to be provided to the agriculture commissioner for the payment of wildlife services for the period beginning with the effective date of this Act and ending June 30, 2007.

**SECTION 5. CONTINGENT APPROPRIATION - GRANTS.** The grants line item in section 3 of this Act includes \$109,750 for a grant to the parks and recreation department for boat ramp improvements at Fort Stevenson state park. The \$109,750 may be spent only if the corps of engineers does not begin construction of a marina at Fort Stevenson state park by March 31, 2008.

**SECTION 6. LEGISLATIVE INTENT.** It is the intent of the sixtieth legislative assembly that \$100,000 contained in the grants line item in section 3 of this Act be used to carry out a grant program to encourage hunting by youth. The director of the game and fish department may provide grants under this program to local communities to fund shooting ranges and other related activities to encourage hunting by youth.

**SECTION 7. GAME AND FISH DEPARTMENT TO STUDY RECRUITMENT AND RETENTION OF HUNTERS IN NORTH DAKOTA - REPORT TO LEGISLATIVE COUNCIL.** The game and fish department shall study the recruitment and retention of hunters in North Dakota. The study must include identification of programs to recruit and retain hunters in this state. The department shall report its findings to the budget section by December 31, 2008.

**SECTION 8. EMERGENCY.** The \$1,040,000 included in the ramp improvements and marina development line item included in section 3 of this Act and the appropriation provided in section 4 of this Act are declared to be emergency measures.

Approved April 26, 2007  
Filed April 27, 2007

**CHAPTER 44****SENATE BILL NO. 2018**

(Appropriations Committee)  
(At the request of the Governor)

**HISTORICAL SOCIETY**

AN ACT to provide an appropriation for defraying the expenses of the state historical society; to amend and reenact section 3 of Senate Bill No. 2341, as approved by the sixtieth legislative assembly, relating to the heritage center expansion project; and to provide legislative intent.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the state historical society in section 3 of this Act as follows:

Salaries and wages	\$5,633,286
Operating expenses	1,508,706
Capital assets	8,282,319
Grants	1,300,000
Cultural heritage grants	325,000
Yellowstone-Missouri-Fort Union Commission	4,492
Lewis and Clark bicentennial	932,420
Medal of honor monument	<u>35,000</u>
Total all funds - Base level	\$18,021,223
Less estimated income - Base level	<u>9,927,165</u>
Total general fund - Base level	\$8,094,058

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the state historical society which are included in the appropriation in section 3 of this Act as follows:

Salaries and wages	\$1,539,371
Operating expenses	615,205
Capital assets	(4,940,738)
Grants	(300,000)
Cultural heritage grants	50,000
Lewis and Clark bicentennial	(932,420)
Snow angel project	10,000
Medal of honor monument	<u>(35,000)</u>
Total all funds - Adjustments/enhancements	(\$3,993,582)
Less estimated income - Adjustments/enhancements	<u>(6,107,703)</u>
Total general fund - Adjustments/enhancements	\$2,114,121

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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 society for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Salaries and wages	\$7,172,657
Operating expenses	2,123,911
Capital assets	3,341,581
Grants	1,000,000
Cultural heritage grants	375,000
Snow angel project	10,000
Yellowstone-Missouri-Fort Union Commission	4,492
Total all funds	\$14,027,641
Less estimated income	3,819,462
Total general fund appropriation	\$10,208,179

**SECTION 4. REVOLVING FUND - APPROPRIATION.** All fees collected by the state historical society and deposited in the revolving fund established pursuant to section 55-03-04 are appropriated to the state historical society for the purposes provided in chapter 55-03, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 5. GIFTS, GRANTS, AND BEQUESTS - APPROPRIATION.** All gifts, grants, devises, bequests, donations, and assignments received by the state historical society and deposited with the state treasurer pursuant to section 55-01-04 are appropriated to the state historical society for the purposes provided in section 55-01-04, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 6. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The total general fund appropriation line item in section 3 of this Act includes \$1,628,000 and Senate Bill No. 2349 includes \$30,000 for the one-time funding items identified in this section. These amounts are not part of the agency's base budget to be used in preparing the 2009-11 executive budget. The state historical society shall report to the appropriations committees of the sixty-first legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2007, and ending June 30, 2009.

Lincoln bicentennial	\$50,000
Capital projects and deferred maintenance	1,298,000
Medal of honor monument	30,000
Marketing	85,000
Chateau de Mores	195,000
Total	\$1,658,000

**SECTION 7. COLD WAR MISSILE SITES.** The capital assets line item in section 3 of this Act includes \$250,000 from the lands and minerals trust fund, \$250,000 from federal funds, and \$200,000 from other funds available to the state historical society through fundraising efforts to acquire the missile alert facility oscar-zero located four and one-half miles north of Cooperstown, North Dakota, and the launch facility november-33 located two and one-half miles east of Cooperstown, North Dakota.

**SECTION 8. INTENT - MISSILE SITE OPERATING COSTS.** It is the intent of the sixtieth legislative assembly that operating costs for the cold war era missile sites occurring after June 30, 2009, be funded by other funds.



**SECTION 9. INTENT - LINCOLN BICENTENNIAL.** It is the intent of the sixtieth legislative assembly that any unexpended appropriations for the Lincoln bicentennial for the 2007-09 biennium be returned to the general fund.

**SECTION 10. AMENDMENT.** Section 3 of Senate Bill No. 2341, as approved by the sixtieth legislative assembly, is amended and reenacted as follows:

**SECTION 3. CONTINGENT APPROPRIATION - LANDS AND MINERALS TRUST FUND.** There is appropriated out of any moneys in the lands and minerals trust fund the sum of \$1,500,000 on a contingency basis to the office of management and budget for the planning and design costs of the heritage center expansion project, for the biennium beginning July 1, 2007, and ending June 30, 2009. The appropriation is only available when the state historical society certifies to the office of management and budget that \$1,500,000 of ~~private~~ other funds has been received or pledged and is available for the project. ~~The private funds must be spent before the funds from the lands and minerals trust fund.~~ The sum of \$1,500,000 of other funds is appropriated to the state historical society for the heritage center expansion project, for the biennium beginning July 1, 2007, and ending June 30, 2009.

Approved April 26, 2007

Filed April 27, 2007

**CHAPTER 45****SENATE BILL NO. 2019**

(Appropriations Committee)  
(At the request of the Governor)

**PARKS AND RECREATION DEPARTMENT**

AN ACT to provide an appropriation for defraying the expenses of the parks and recreation department and the International Peace Garden; to provide contingent appropriations for the international music camp and boat ramp improvements; to provide for a transfer; to amend and reenact section 54-44.4-02 of the North Dakota Century Code, relating to state procurement; to provide for a report; and to declare an emergency.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the parks and recreation department in section 3 of this Act as follows:

## Subdivision 1.

## PARKS AND RECREATION DEPARTMENT

Administration	\$1,804,723
Natural resources	9,672,243
Recreation	8,874,581
Lewis and Clark bicentennial	<u>617,335</u>
Total all funds - Base level	\$20,968,882
Less estimated income - Base level	<u>13,427,583</u>
Total general fund - Base level	\$7,541,299

## Subdivision 2.

## INTERNATIONAL PEACE GARDEN

International Peace Garden	<u>\$602,854</u>
Total general fund - Base level	\$602,854
Total general fund - Section 1	\$8,144,153
Total special funds - Section 1	\$13,427,583
Total all funds - Section 1	\$21,571,736

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the parks and recreation department which are included in the appropriation in section 3 of this Act as follows:

## Subdivision 1.

## PARKS AND RECREATION DEPARTMENT

Administration	\$305,376
Natural resources	3,318,236
Recreation	(237,707)
Capital assets	707,500
Lewis and Clark bicentennial	<u>(617,335)</u>
Total all funds - Adjustments/enhancements	\$3,476,070
Less estimated income - Adjustments/enhancements	<u>(79,194)</u>
Total general fund - Adjustments/enhancements	\$3,555,264

## Subdivision 2.

## INTERNATIONAL PEACE GARDEN

International Peace Garden	\$2,567,000
International music camp contingency	<u>400,000</u>
Total all funds - Adjustments/enhancements	\$2,967,000
Less estimated income - Adjustments/enhancements	<u>200,000</u>
Total general fund - Adjustments/enhancements	\$2,767,000
Total general fund - Section 2	\$6,322,264
Total special funds - Section 2	\$120,806
Total all funds - Section 2	\$6,443,070

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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 for the purpose of defraying the expenses of the parks and recreation department and the International Peace Garden, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

## Subdivision 1.

## PARKS AND RECREATION DEPARTMENT

Administration	\$2,110,099
Natural resources	12,990,479
Recreation	8,636,874
Capital assets	<u>707,500</u>
Total all funds	\$24,444,952
Less estimated income	<u>13,348,389</u>
Total general fund appropriation	\$11,096,563

## Subdivision 2.

## INTERNATIONAL PEACE GARDEN

International Peace Garden	\$3,169,854
International music camp contingency	<u>400,000</u>
Total all funds	\$3,569,854
Less estimated income	<u>200,000</u>
Total general fund appropriation	\$3,369,854
Grand total general fund appropriation - S.B. 2019	\$14,466,417
Grand total special funds appropriation - S.B. 2019	\$13,548,389
Grand total all funds appropriation - S.B. 2019	\$28,014,806

**SECTION 4. GAME AND FISH OPERATING FUND - TRANSFER.** The sum of \$381,750, or so much of the sum as may be necessary, included in the estimated income line item in subdivision 1 of section 3 of this Act, is from the game and fish operating fund, or federal or other funds available to the game and fish department, and must be transferred to the parks and recreation department for maintenance, operating, and extraordinary repairs expenses relating to boat ramps at various state parks for the biennium beginning July 1, 2007, and ending June 30, 2009. Of the \$381,750, \$109,750 is for boat ramp improvements at Fort Stevenson state park and may only be spent if the corps of engineers does not begin construction of the marina at Fort Stevenson by March 31, 2008.

**SECTION 5. CONTINGENT APPROPRIATION - INTERNATIONAL MUSIC CAMP.** The sum of \$200,000 included in the international music camp contingency line item in section 3 of this Act is from the general fund, and the sum of \$200,000 included in the international music camp contingency line item in section 3 of this Act is from other funds available to the International Peace Garden. The International

Peace Garden may only spend the general fund appropriation to the extent other funds become available on a dollar-for-dollar matching basis.

**SECTION 6. CAPITAL ASSETS - INSURANCE PROCEEDS - APPROPRIATION.** The amount in the capital assets line item in subdivision 1 of section 3 of this Act includes \$125,000 from the general fund and \$108,000 from insurance proceeds to be used to replace a maintenance building and other capital assets owned by the parks and recreation department that were destroyed by fire. Any additional income from insurance proceeds, in excess of the \$108,000, is appropriated, for the period beginning with the effective date of this Act and ending June 30, 2009, to the parks and recreation department to assist with the replacement of the maintenance building and other capital assets.

<sup>20</sup> **SECTION 7. AMENDMENT.** Section 54-44.4-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.4-02. Office of management and budget purchasing services.** The office of management and budget shall purchase or lease or otherwise arrange for the procurement, for all state agencies and institutions in the executive branch of state government, all materials, furniture, fixtures, printing, insurance, services, and other commodities. The International Peace Garden may participate in the procurement authorized by this section. The following commodities and services, however, are not subject to the procurement requirements of this chapter:

1. Land, buildings, space, or the rental thereof.
2. Telephone and telegraph service and electrical light and power services.
3. Public books, maps, periodicals, and technical pamphlets.
4. Department of transportation materials, equipment, and supplies in accordance with section 24-02-16.
5. Procurements through a contract or other instrument executed by the industrial commission under chapter 54-17.5.
6. Services for the maintenance or servicing of equipment by the manufacturer or authorized servicing agent of that equipment when the maintenance or servicing can best be performed by the manufacturer or authorized service agent, or when such a contract would otherwise be advantageous to the state.
7. Emergency purchases the office of management and budget cannot make within the required time and which involve public health or public safety, or when immediate expenditures are necessary for repairs of state property to protect it against further loss or damage, or to prevent or minimize serious disruption in state services. Emergency purchases must be made with the level of competition practicable under the

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<sup>20</sup> Section 54-44.4-02 was also amended by section 6 of House Bill No. 1060, chapter 314, section 6 of House Bill No. 1127, chapter 413, and section 3 of House Bill No. 1128, chapter 464.

circumstances, and a written determination of the basis for the emergency and for the selection of the particular contractor must be included in the contract file.

8. Commodities and services costing less than a specified amount as determined by written directive by the director of the office of management and budget.
9. Specified commodities and services as determined by written directive by the director of the office of management and budget.
10. Employee benefit services, trust-related services, and investment management services obtained by an agency with a fiduciary responsibility regarding those services.

All purchases made by the office of management and budget or a state agency or institution to which authority to purchase has been delegated by the office of management and budget must be made in accordance with this chapter, rules adopted under this chapter, and written policies of the office of management and budget.

**SECTION 8. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The total general fund appropriation line item in section 3 of this Act includes \$5,388,000 for the one-time funding items identified in this section. This amount is not a part of the agency's base budget to be used in preparing the 2009-11 executive budget. The parks and recreation department shall report to the appropriations committees of the sixty-first legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2007, and ending June 30, 2009.

Online reservation system and equipment replacement	\$660,000
Parks capital projects and deferred maintenance	2,295,000
International Peace Garden capital projects and deferred maintenance	<u>2,433,000</u>
Total	<u>\$5,388,000</u>

**SECTION 9. EMERGENCY.** The sum of \$233,000 in the capital assets line item in subdivision 1 of section 3 and section 6 of this Act are declared to be an emergency measure.

Approved May 1, 2007  
Filed May 2, 2007

**CHAPTER 46****SENATE BILL NO. 2020**

(Appropriations Committee)  
(At the request of the Governor)

**WATER COMMISSION**

AN ACT to provide an appropriation for defraying the expenses of the state water commission; to create and enact a new section to chapter 61-02.1 of the North Dakota Century Code, relating to funding for Grand Forks flood control; to amend and reenact section 61-34-04 of the North Dakota Century Code, relating to eligibility for the drought disaster livestock water assistance program; to provide a line of credit; to provide an appropriation for repayment of the line of credit; to provide legislative intent; to provide for a study; and to declare an emergency.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the state water commission in section 3 of this Act as follows:

Administrative and support services	\$2,180,445
Water and atmospheric resources	<u>123,890,493</u>
Total all funds - Base level	\$126,070,938
Less estimated income - Base level	<u>125,059,718</u>
Total general fund - Base level	\$1,011,220

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the state water commission which are included in the appropriation in section 3 of this Act as follows:

Administrative and support services	\$275,850
Water and atmospheric resources	<u>49,663,767</u>
Total all funds - Adjustments/enhancements	\$49,939,617
Less estimated income - Adjustments/enhancements	<u>37,063,331</u>
Total general fund - Adjustments/enhancements	\$12,876,286

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are 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 for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Administrative and support services	\$2,456,295
Water and atmospheric resources	<u>173,554,260</u>
Total all funds	\$176,010,555
Less estimated income	<u>162,123,049</u>
Total general fund appropriation	\$13,887,506

**SECTION 4. RESOURCES TRUST FUND - APPROPRIATION.** The sum of \$69,352,698, or so much of the sum as may be necessary, included in the estimated income line item in section 3 of this Act is from the resources trust fund and must be used by the state water commission for purposes authorized by the legislative assembly, for the biennium beginning July 1, 2007, and ending June 30, 2009. Any additional amount in the resources trust fund that becomes available is appropriated to the state water commission for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 5. WATER DEVELOPMENT TRUST FUND - APPROPRIATION.** The sum of \$40,055,999, or so much of the sum as may be necessary, included in the estimated income line item in section 3 of this Act is from the water development trust fund and must be used by the state water commission for purposes authorized by the legislative assembly, for the biennium beginning July 1, 2007, and ending June 30, 2009. Any additional amount in the water development trust fund that becomes available is appropriated to the state water commission for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 6. GRANTS - WATER-RELATED PROJECTS - CARRYOVER AUTHORITY.** Section 54-44.1-11 does not apply to funding for grants or water-related projects included in the water and atmospheric resources line item in section 3 of this Act. However, this exclusion is only in effect for two years after June 30, 2009. Any unexpended funds appropriated from the resources trust fund after that period has expired must be transferred to the resources trust fund and any unexpended funds appropriated from the water development trust fund after that period has expired must be transferred to the water development trust fund.

**SECTION 7. LINE OF CREDIT - CONTINGENT APPROPRIATION.** If determined necessary by the state water commission, the Bank of North Dakota shall extend a line of credit, not to exceed \$25,000,000, which is appropriated to the state water commission, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 8. REPAYMENT OF LINE OF CREDIT - CONTINGENT APPROPRIATION.** If the line of credit authorized in section 7 of this Act is extended to the state water commission by the Bank of North Dakota, there is appropriated out of any moneys in the water development trust fund, the resources trust fund, bond proceeds, or other sources, the sum of \$25,000,000, or so much of the sum as may be necessary, to the state water commission for the purpose of repaying the line of credit, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 9.** A new section to chapter 61-02.1 of the North Dakota Century Code is created and enacted as follows:

**Grand Forks flood control project.** Notwithstanding any other provision of law or policy, any existing caps may not be construed to limit access to total state funding of up to fifty-two million dollars for the Grand Forks flood control project.

<sup>21</sup> **SECTION 10. AMENDMENT.** Section 61-34-04 of the North Dakota Century Code is amended and reenacted as follows:

**61-34-04. Eligibility - Application for assistance.** Applicants with livestock water supply problems caused by drought may apply for assistance from the program. An applicant must first apply for water cost-share assistance from the agriculture stabilization and conservation service. If cost-share assistance is denied by the service, the applicant may forward the application to the commission for consideration. An application forwarded to the commission must include a document from the agriculture stabilization and conservation service stating the reason for denial of cost-share assistance. The state engineer shall review all applications received by the commission. Notwithstanding any other provision of law, a water supply project commenced after application for funding is made but without prior approval of the state engineer is eligible for funding from the program. If the state engineer approves an application, the applicant may receive up to fifty percent of the cost of the project, but in no event more than three thousand five hundred dollars. The state engineer shall provide funds for approved applications in accordance with rules and criteria for eligibility and only to the extent that funding is available.

**SECTION 11. TILE DRAINAGE EFFECTS ON WATER USE STUDY.** The state water commission shall study, develop, and recommend policies and procedures for assessing the impact of tile drainage on the beneficial use of water by prior water appropriators. The state water commission shall report its findings and recommendations to the legislative council by July 1, 2008.

**SECTION 12. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FIRST LEGISLATIVE ASSEMBLY.** The total general fund appropriation line item in section 3 of this Act includes \$3,000,000 for the one-time funding items identified in this section. This amount is not a part of the agency's base budget to be used in preparing the 2009-11 executive budget. The state water commission shall report to the appropriations committees of the sixty-first legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2007, and ending June 30, 2009.

Red River water supply project	\$3,000,000
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**SECTION 13. LEGISLATIVE INTENT - SWEETBRIAR DAM PROJECT.** It is the intent of the sixtieth legislative assembly that the state water commission provide funding for the sweetbriar dam project. In addition, Morton County shall contribute \$15,000 toward the sweetbriar dam project and \$1,000,000 must be made available from the game and fish fund for the project which is appropriated in section 3 of this Act. The funding from the game and fish fund and Morton County is contingent upon funding being made available for the project by the state water commission during the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 14. EMERGENCY.** Section 10 of this Act is declared to be an emergency measure.

Approved May 1, 2007  
 Filed May 2, 2007

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<sup>21</sup> Section 61-34-04 was also amended by section 1 of House Bill No. 1215, chapter 561.



**CHAPTER 47****SENATE BILL NO. 2021**

(Appropriations Committee)  
(At the request of the Governor)

**WORKFORCE SAFETY AND INSURANCE**

AN ACT to provide an appropriation for defraying the expenses of workforce safety and insurance; to provide legislative intent; to provide for a report; to provide a continuing appropriation; and to create and enact a new section to chapter 65-02 of the North Dakota Century Code, relating to implementation of occupational health and preventive medicine programs.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amount identified in this section represents the base level funding component appropriated to workforce safety and insurance in section 3 of this Act as follows:

Total special funds - Base level \$33,523,001

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amount identified in this section represents the funding adjustments or enhancements to the base funding level for workforce safety and insurance which are included in the appropriation in section 3 of this Act as follows:

Total special funds - Adjustments/enhancements \$19,750,731

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from the workforce safety and insurance fund in the state treasury, not otherwise appropriated, to workforce safety and insurance, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Total special funds appropriation \$53,273,732

**SECTION 4. INTENT - STATE EMPLOYEE COMPENSATION ADJUSTMENTS - GUIDELINES.** It is the intent of the sixtieth legislative assembly that the general salary increases provided for in Senate Bill No. 2189 do not apply to workforce safety and insurance. Workforce safety and insurance may provide salary increases during the 2007-09 biennium based on the agency's merit and performance system.

**SECTION 5. PERFORMANCE AUDIT RECOMMENDATIONS - REPORT TO THE BUDGET SECTION.** Workforce safety and insurance shall report quarterly to the budget section on the agency's status of implementing the performance audit recommendations of the state auditor.

**SECTION 6.** A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

**Occupational health and preventive medicine programs - Continuing appropriation.** Upon approval of the board, the organization may establish and implement programs to advance occupational health and preventive medicine in this state and to protect the integrity of the fund. These programs may include the provision of education or training, consultation, grants, scholarships, or other incentives that promote superior care and treatment of the workforce in this state. Funds in the workforce and insurance fund are appropriated to the organization on a continuing basis for the purpose of funding the programs implemented under this section.

Approved May 2, 2007  
Filed May 3, 2007

**CHAPTER 48****SENATE BILL NO. 2022**(Appropriations Committee)  
(At the request of the Governor)**RETIREMENT AND INVESTMENT AGENCIES**

AN ACT to provide an appropriation for defraying the expenses of various state retirement and investment agencies; and to provide additional spending authority subject to emergency commission approval.

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

**SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this section represent the base level funding component appropriated to the retirement and investment agencies in section 3 of this Act as follows:

## Subdivision 1.

## RETIREMENT AND INVESTMENT OFFICE

Salaries and wages	\$1,978,420
Operating expenses	914,608
Contingencies	82,000
Total special funds - Base level	\$2,975,028

## Subdivision 2.

## PUBLIC EMPLOYEES RETIREMENT SYSTEM

Salaries and wages	\$2,885,526
Operating expenses	1,564,711
Contingencies	250,000
OASIS insurance	19,000
Total all funds - Base level	\$4,719,237
Less estimated income - Base level	4,700,237
Total general fund - Base level	\$19,000
Total general fund - Section 1	\$19,000
Total special funds - Section 1	\$7,675,265
Total all funds - Section 1	\$7,694,265

**SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The amounts identified in this section represent the funding adjustments or enhancements to the base funding level for the retirement and investment agencies which are included in the appropriation in section 3 of this Act as follows:

## Subdivision 1.

## RETIREMENT AND INVESTMENT OFFICE

Salaries and wages	\$358,885
Operating expenses	16,391
Total special funds - Adjustments/enhancements	\$375,276

## Subdivision 2.

## PUBLIC EMPLOYEES RETIREMENT SYSTEM

Salaries and wages	\$864,319
Operating expenses	9,679,308

OASIS insurance	<u>(19,000)</u>
Total all funds - Adjustments/enhancements	\$10,524,627
Less estimated income - Adjustments/enhancements	<u>10,543,627</u>
Total general fund - Adjustments/enhancements	(\$19,000)
Total general fund - Section 2	(\$19,000)
Total special funds - Section 2	\$10,918,903
Total all funds - Section 2	\$10,899,903

**SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys from special funds derived from income, to the retirement and investment agencies listed in this section for the purpose of defraying their expenses, for the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

Subdivision 1.

RETIREMENT AND INVESTMENT OFFICE

Salaries and wages	\$2,337,305
Operating expenses	930,999
Contingencies	<u>82,000</u>
Total special funds appropriation	\$3,350,304

Subdivision 2.

PUBLIC EMPLOYEES RETIREMENT SYSTEM

Salaries and wages	\$3,749,845
Operating expenses	11,244,019
Contingencies	<u>250,000</u>
Total special funds appropriation	\$15,243,864
Grand total special funds appropriation - S.B. 2022	\$18,594,168

**SECTION 4. APPROPRIATION LINE ITEM TRANSFERS.** Upon approval of the respective boards, the retirement and investment office and the public employees retirement system may transfer from their respective contingencies line items in subdivisions 1 and 2 of section 3 of this Act to all other line items. The agencies shall notify the office of management and budget of each transfer made pursuant to this section.

**SECTION 5. ADDITIONAL SPENDING AUTHORITY - EMERGENCY COMMISSION APPROVAL.** The public employees retirement system may seek emergency commission approval for additional spending authority required to complete implementation of the legacy application system replacement project during the 2007-09 biennium.

Approved May 1, 2007  
 Filed May 2, 2007

**CHAPTER 49****SENATE BILL NO. 2023**

(Appropriations Committee)  
(At the request of the Governor)

**DEFICIENCY APPROPRIATION**

AN ACT to provide an appropriation for defraying the expenses of various state departments and institutions; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sums as hereinafter provided or so much of the sums as may be necessary. These sums increase the general fund authority enacted by the fifty-ninth legislative assembly to the stated departments and institutions of the state of North Dakota for the purpose of defraying their expenses, for the period beginning January 1, 2007, and ending June 30, 2007, as follows:

Subdivision 1.		
	DEPARTMENT OF PUBLIC INSTRUCTION	
Operating expenses		<u>\$275,000</u>
Total general fund appropriation		<u>\$275,000</u>
Subdivision 2.		
	OFFICE OF THE ATTORNEY GENERAL	
Litigation fees		\$21,140
State school finance lawsuit		103,030
Operating expenses		<u>43,000</u>
Total general fund appropriation		<u>\$167,170</u>
Subdivision 3.		
	OFFICE OF THE ADJUTANT GENERAL	
Operating expenses		<u>\$4,100,000</u>
Total general fund appropriation		<u>\$4,100,000</u>
Subdivision 4.		
	DEPARTMENT OF AGRICULTURE	
Salaries and wages		\$42,538
Operating expenses		<u>15,592</u>
Total general fund appropriation		<u>\$58,130</u>
Subdivision 5.		
	UNIVERSITY OF NORTH DAKOTA	
1997 flood expenditures		<u>\$2,069,727</u>
Total general fund appropriation		<u>\$2,069,727</u>
Subdivision 6.		
	NORTH DAKOTA STATE UNIVERSITY	
2000 flood expenditures		<u>\$289,092</u>
Total general fund appropriation		<u>\$289,092</u>

## Subdivision 7.

## NORTH DAKOTA FOREST SERVICE

Operating expenses	<u>\$55,500</u>
Total general fund appropriation	\$55,500

## Subdivision 8.

## DEPARTMENT OF CORRECTIONS AND REHABILITATION

Field services	\$612,067
Prisons division	<u>3,457,765</u>
Total general fund appropriation	\$4,069,832
Grand total general fund appropriation - S.B. 2023	\$11,084,451

**SECTION 2. EXEMPTION.** The appropriation contained in subdivision 3 of section 1 of this Act is not subject to the provisions of section 54-44.1-11 and any unexpended funds from this appropriation are available during the biennium beginning July 1, 2007, and ending June 30, 2009, for the purpose of providing state matching funds for public assistance and disaster hazard mitigation.

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

Approved April 30, 2007

Filed May 1, 2007

**CHAPTER 50****SENATE BILL NO. 2024**

(Appropriations Committee)  
(At the request of the Governor)

**MEDICAID MANAGEMENT INFORMATION SYSTEM**

AN ACT to provide an appropriation for defraying the expenses of the department of human services for a medicaid management information system; to provide an exemption; to provide for budget section reports and budget section approval; and to declare an emergency.

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

**SECTION 1. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$3,643,133, or so much of the sum as may be necessary, and from special funds derived from federal funds, the sum of \$27,429,508, or so much of the sum as may be necessary, to the department of human services for the design, development, and implementation of a medicaid management information system that meets the requirements of title 42, Code of Federal Regulations, part 433, subpart C, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 2. EXEMPTION.** The amount appropriated for the design, development, and implementation of a medicaid management information system, as contained in section 3 of chapter 12 of the 2005 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from the amount appropriated by the 2005 legislative assembly for this purpose are available for the continued design, development, and implementation of a medicaid management information system.

**SECTION 3. BUDGET SECTION REPORTS.** The department of human services shall report at each budget section meeting during the 2007-08 interim on the status of the medicaid management information system computer project.

**SECTION 4. CONTINGENCY FUNDS - BUDGET SECTION APPROVAL.** Of the total amount appropriated in section 1 of this Act, \$5,680,000 is for project contingencies. The department of human services shall obtain budget section approval prior to obligation or expenditure of funds related to a project change or other occurrence that requires the use of \$500,000 or more of the contingency funds for the period beginning with the effective date of this Act and ending June 30, 2009.

**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.

Approved February 14, 2007  
Filed February 14, 2007

**CHAPTER 51****SENATE BILL NO. 2161**

(Senators Robinson, Bakke, Lyson)  
(Representatives Carlisle, DeKrey, Kroeber)

**SEXUAL OFFENDER REGISTRATION KIOSKS**

AN ACT to provide an appropriation to the attorney general for computerized sexual offender registration kiosks; and to provide for a legislative council study of the feasibility and desirability of implementing a system of computerized registration sites for criminal offenders.

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

**SECTION 1. APPROPRIATION.** There is appropriated from special funds derived from federal funds or other sources, not otherwise appropriated, the sum of \$1,046,080, or so much of the sum as may be necessary, to the attorney general for ten computerized sexual offender registration sites, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 2. LEGISLATIVE COUNCIL STUDY - COMPUTERIZED REGISTRATION SITES FOR CRIMINAL OFFENDERS.** If notified by the attorney general that federal or other funds have not been awarded as of September 1, 2007, the legislative council shall consider studying, during the 2007-08 interim, in consultation with the department of corrections and rehabilitation, attorney general's office, and other law enforcement agencies, the feasibility and desirability of implementing a system of computerized registration sites for certain criminal offenders.

Approved April 26, 2007  
Filed April 27, 2007



**CHAPTER 52****SENATE BILL NO. 2179**

(Senators Wanzek, Flakoll, Robinson)  
(Representatives Boe, Headland, D. Johnson)

**BLACKBIRD MITIGATION APPROPRIATION**

AN ACT to provide an appropriation for the mitigation of crop damage by blackbirds.

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

**SECTION 1. APPROPRIATION.** There is appropriated out of any moneys in the environment and rangeland protection fund in the state treasury, not otherwise appropriated, the sum of \$79,500, or so much of the sum as may be necessary, and appropriated out of any moneys in the oilseed fund in the state treasury, not otherwise appropriated, the sum of \$79,500, or so much of the sum as may be necessary, to the agriculture commissioner for the purpose of contracting with the United States department of agriculture, animal and plant health inspection service, or other appropriate federal agency, to mitigate crop damage by blackbirds, for the biennium beginning July 1, 2007, and ending June 30, 2009.

Approved April 26, 2007  
Filed April 27, 2007

**CHAPTER 53****SENATE BILL NO. 2187**

(Senators Wardner, Kilzer, Mathern)  
(Representatives Charging, Dahl, Williams)

**EMERGENCY SHELTER AND HOMELESS  
ASSISTANCE FUNDING**

AN ACT to provide an appropriation for providing funding to emergency shelter programs and for providing funding for planning and administrative costs associated with the housing and urban development's continuum of care homeless assistance program.

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

**SECTION 1. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much of the sum as may be necessary, to the department of commerce for the purpose of funding emergency shelter programs, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much of the sum as may be necessary, to the department of commerce for the purpose of providing funding for planning and administrative costs associated with the continuum of care homeless assistance program of the United States department of housing and urban development, for the biennium beginning July 1, 2007, and ending June 30, 2009.

Approved May 2, 2007  
Filed May 3, 2007

**CHAPTER 54****SENATE BILL NO. 2189**

(Senators Nething, Dever, Robinson)  
(Representatives Delmore, Porter, Weiler)

**STATE EMPLOYEE COMPENSATION ADJUSTMENTS**

AN ACT to provide an appropriation for state employee salary equity adjustments; to provide a statement of legislative intent regarding state employee compensation adjustments; and to provide a statement of legislative intent regarding state employee health insurance premiums.

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

**SECTION 1. APPROPRIATION - OFFICE OF MANAGEMENT AND BUDGET - STATEWIDE SALARY EQUITY POOL.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$5,000,000, or so much of the sum as may be necessary, and from special funds, derived from federal funds or other income, the sum of \$5,000,000, or so much of the sum as may be necessary, to the office of management and budget for the purpose of providing statewide salary equity adjustments for classified state employees in accordance with provisions of section 2 of this Act, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 2. STATEWIDE SALARY EQUITY POOL FOR CLASSIFIED STATE EMPLOYEES.** The statewide salary equity pool appropriation included in section 1 of this Act must be used for market equity compensation adjustments for classified state employees. The market equity adjustments are to begin with the month of July 2007, to be paid in August 2007. The market equity adjustments are independent of any general salary increase provided by the legislative assembly.

The market equity increases are to be prioritized based on equity for employees whose salaries are furthest from their respective salary range midpoints effective July 1, 2007.

Probationary employees are eligible for the market equity increases. Employees whose documented performance levels do not meet standards are not eligible for the market equity increases.

Human resource management services shall provide a model base plan to each agency. Agencies may adopt the model plan, adopt the model plan with exceptions, or offer an alternative plan that meets the intent outlined in this section.

Upon adoption of an appropriate plan and application to human resource management services, the fiscal management division shall transfer to each eligible agency appropriated general fund or special fund spending authority from the statewide salary equity pool appropriation contained in section 1 of this Act.

**SECTION 3. LEGISLATIVE INTENT - STATE EMPLOYEE COMPENSATION ADJUSTMENTS - GUIDELINES.** It is the intent of the sixtieth legislative assembly that 2007-09 compensation adjustments for permanent state employees are to be based on documented performance and equity. General increases based on legislative appropriations are to be given beginning with the

month of July 2007, to be paid in August 2007, and beginning with the month of July 2008, to be paid in August 2008. Each agency appropriation is increased by 4.0 percent for the first year of the 2007-09 biennium and 4.0 percent for the second year of the 2007-09 biennium.

Employees whose documented performance levels do not meet standards are not eligible for any salary increase. Each employee whose documented performance meets all standards is to receive a minimum monthly increase of \$75 on July 1, 2007, and \$75 on July 1, 2008.

Probationary employees are not entitled to the general increases. However, probationary employees may be given all or a portion of the increases effective in July, paid in August, or upon completion of probation, at the discretion of the appointing authority.

During the biennium, no salary increase other than a temporary increase may be given to an employee whose salary exceeds or would exceed the salary range maximum.

**SECTION 4. LEGISLATIVE INTENT - STATE EMPLOYEE HEALTH INSURANCE PREMIUMS.** It is the intent of the sixtieth legislative assembly that state agency appropriations include the funding necessary to provide for health insurance premiums for eligible state employees at the monthly premium rate of \$658.08 for the biennium beginning July 1, 2007, and ending June 30, 2009.

Approved February 7, 2007  
Filed February 7, 2007

**CHAPTER 55****SENATE BILL NO. 2418**

(Senators Stenehjem, Nething, Robinson)  
(Representatives Berg, DeKrey, Metcalf)  
(Approved by the Delayed Bills Committee)

**VETERANS' HOME CONSTRUCTION PROJECT**

AN ACT to provide a contingent appropriation to the veterans' home for the purpose of building a new facility; to provide for the issuance of evidences of indebtedness; to provide for an exception to the moratorium on expansion of long-term care bed capacity; and to provide for reports to the budget section.

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

**SECTION 1. CONTINGENT APPROPRIATION - VETERANS' HOME CONSTRUCTION PROJECT.** There is appropriated out of any moneys in the permanent oil tax trust fund in the state treasury, not otherwise appropriated, the sum of \$6,483,226, or so much of the sum as may be necessary, and \$12,040,278 from federal funds, to demolish the existing veterans' home and to build a new structure. The appropriation from the permanent oil tax trust fund is to only be made available upon the veterans' home obtaining approval for a federal state home construction grant from the federal department of veterans' affairs. The state share of the veterans' home construction project authorized in this section is limited to thirty-five percent of the total project cost or \$6,483,226, whichever is less. The veterans' home shall ensure the appropriate engineering studies are conducted prior to construction of the new facility.

**SECTION 2. APPROPRIATION - VETERANS' HOME CONSTRUCTION PROJECT - ADDITIONAL BED CAPACITY - BOND ISSUANCE AUTHORIZATION.** The industrial commission, acting as the North Dakota building authority, shall arrange through the issuance of evidences of indebtedness under chapter 54-17.2 for the biennium beginning July 1, 2007, and ending June 30, 2009, for project costs associated with expanding the veterans' home construction project from the 121-bed capacity facility, as provided for in section 1 of this Act, to a 150-bed facility declared to be in the public interest. The industrial commission shall issue evidences of indebtedness under this section with the condition that repayments need not begin until July 1, 2009. The authority of the industrial commission to issue evidences of indebtedness under this section ends June 30, 2009, but the industrial commission may continue to exercise all other powers granted to it under chapter 54-17.2 and this Act and comply with any covenants entered into before that date. The proceeds of the evidences of indebtedness and other available funds in the amount of \$2,575,152 are appropriated to the veterans' home for this project. Non-general fund sources must be used for the retirement of the evidences of indebtedness for the costs associated with this project.

**SECTION 3. EXCEPTION TO THE MORATORIUM ON EXPANSION OF LONG-TERM CARE BED CAPACITY.** Notwithstanding North Dakota Century Code section 23-16-01.1, after completion of the veterans' home construction project, the veterans' home may add to the state's licensed nursing facility capacity by converting fourteen licensed basic care beds to licensed nursing facility beds.

**SECTION 4. REPORTS TO THE BUDGET SECTION - VETERANS' HOME CONSTRUCTION PROJECT.** The veterans' home shall provide periodic reports to the budget section regarding the status of the veterans' home construction project during the 2007-08 interim.

Approved April 12, 2007  
Filed April 12, 2007

# AGRICULTURE

## CHAPTER 56

### HOUSE BILL NO. 1382

(Representatives L. Meier, Haas, Weiler)  
(Senator Dever)

## COUNTY ELECTION FILING DATES

AN ACT to amend and reenact sections 4-08-06 and 44-02-07 of the North Dakota Century Code, relating to county election filing dates.

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

**SECTION 1. AMENDMENT.** Section 4-08-06 of the North Dakota Century Code is amended and reenacted as follows:

**4-08-06. Filing date of petitions for election.** No board of county commissioners may place the question of extension work on a ballot without having received a notification from the county auditor that the petitions, as provided for in this chapter, have been filed at least ~~thirty~~ sixty days before the date of election.

**SECTION 2. AMENDMENT.** Section 44-02-07 of the North Dakota Century Code is amended and reenacted as follows:

**44-02-07. Brief vacancy not to be filled - Exception.** If a vacancy occurs within ~~thirty~~ sixty days previous to an election at which it may be filled, no appointment may be made unless it is necessary to carry out such election and the canvass of the same according to law. In such case an appointment may be made at any time previous to such election to hold until after such election or until the appointee's successor is elected and qualified.

Approved March 6, 2007

Filed March 7, 2007

**CHAPTER 57****HOUSE BILL NO. 1124**

(Agriculture Committee)

(At the request of the State Seed Commission)

**SEED LABELING AND INSPECTIONS**

AN ACT to amend and reenact sections 4-09-01, 4-10-01, 4-10-05, and 4-42-11 of the North Dakota Century Code, relating to labeling requirements and potato seed and crop warranties or representations; and to repeal section 4-10-11 of the North Dakota Century Code, relating to inspector certificates.

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

**SECTION 1. AMENDMENT.** Section 4-09-01 of the North Dakota Century Code is amended and reenacted as follows:

**4-09-01. Definitions.** In this chapter, unless the context otherwise requires:

1. "Advertisement" means any representation, other than representations made on labels, which relates to seed.
2. "Agent", when used in connection with the commissioner, means the commissioner's deputy, inspector, analyst, specialist, aide, agent, and employee, when each is acting officially for the commissioner or performing any duty or duties as provided in this chapter or in the rules adopted to implement this chapter.
3. "Agricultural seed" means the seed of grass, forage, cereal, fiber, oil crops, Irish potato seed tubers, and any other kind of seeds commonly recognized within this state as agricultural seed, lawn seed, and mixture of these seeds.
4. "Blend" means seed consisting of more than one variety of a kind, each in excess of five percent by weight of the whole.
5. "Brand" means a word, name, or symbol, number, or design used to identify seed of one person to distinguish that seed from seed of another person.
6. "Certified" means the agricultural seed was randomly inspected and found to meet the rules of the department at the time of inspection.
7. "Commission" means the state seed commission.
- ~~7.~~ 8. "Commissioner" means the state seed commissioner.
- ~~8.~~ 9. "Conditioning" means drying, cleaning, scarifying, and other operations that may change the purity or germination of the seed.
- ~~9.~~ 10. "Department" means the seed department of this state.



- ~~40.~~ 11. "Flower seed" includes a seed of a herbaceous plant grown for the bloom, ornamental foliage, or other ornamental part, and commonly known and sold under the name of flower or wildflower seed in this state.
- ~~44.~~ 12. "Foundation seed", "registered seed", and "certified seed" means seed that has been produced and labeled in accordance with the procedures and in compliance with the rules of an officially recognized seed-certifying agency.
- ~~42.~~ 13. "Germination" means the percentage of seed capable of producing normal seedlings under ordinarily favorable conditions as determined by methods prescribed under the rules established by the association of official seed analysts. The percentage does not include seed that produces weak, malformed, or obviously abnormal sprouts.
- ~~43.~~ 14. "Hard seed" means a seed that remains hard at the end of the prescribed test period because the seed has not absorbed water due to an impermeable seed coat.
- ~~44.~~ 15. "Inert matter" means all matter not seed and includes the broken seed, a sterile floret, chaff, a fungus body, and a stone.
- ~~45.~~ 16. "Kind" means one or more related species or subspecies which singly or collectively is known by one common name, such as corn, oats, alfalfa, or timothy.
- ~~46.~~ 17. "Labeler" means the person who furnishes the information required in sections 4-09-10, 4-09-11, 4-09-11.1, and 4-09-11.2.
- ~~47.~~ 18. "Labeling" means a tag or other device attached to or information written, stamped, or printed on any container or accompanying a lot of bulk seed that contains information required by this chapter.
- ~~48.~~ 19. "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform, within permitted tolerances, for the factors which appear in the labeling.
- ~~49.~~ 20. "Mixture" means seed consisting of more than one kind, each in excess of five percent by weight of the whole.
- ~~20.~~ 21. "Noxious weed seed" is divided into three classes defined as:
- a. "Prohibited noxious weed seed" means a weed seed that is prohibited from being present in agricultural, vegetable, flower, tree, or shrub seed and is highly destructive and difficult to control by good cultural practices and the use of herbicides and includes a seed of leafy spurge (*euphorbia esula* L.), field bindweed (*convolvulus arvensis* L.), Canada thistle (*circium arvense* (L.) scop.), perennial sow thistle (*sonchus arvensis* L.), Russian knapweed (*centaurea repens* L.), absinth wormwood (*artemisia absinthium* L.), hemp (*cannabis sativa* L.) having more than three-tenths of one percent tetrahydrocannabinol, musk thistle (*carduus nutans* L.), spotted knapweed (*centaurea maculosa* lam.), hoary cress (*cardaria draba* (L.) desv.), and yellow starthistle (*centaurea solstitialis* L.).

- b. "Restricted noxious weed seed" means a seed that is objectionable in agricultural crops, lawns, and gardens in this state and can be controlled by good cultural practices or the use of herbicides and includes the seed of dodder (*cuscuta* species), hedge bindweed (*convolvulus sepium* l.), wild oats (*avena fatua* l.), and quackgrass (*agropyron repens* (l.) beauv.).
  - c. "Undesirable grass seed" means a seed of grass species declared by the commissioner to be a restricted noxious weed seed when found in lawn or turf seed.
- ~~24.~~ 22. "Official seed-certifying agency" means:
- a. An agency authorized under the laws of a state, territory, or possession to officially certify seed which has standards and procedures approved by the United States secretary of agriculture to assure the genetic purity and identity of the seed certified; or
  - b. An agency of a foreign country determined by the United States secretary of agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed-certifying agencies under subdivision a.
- ~~22.~~ 23. "Pest" means any invertebrate animal, pathogen, parasitic plant, or similar organism causing or capable of causing injury or damage to any plant or part of a plant or any processed, manufactured, or other product of a plant.
- ~~23.~~ 24. "Phytosanitary certificate" means a document issued or authorized by the commissioner indicating that the seed or tubers were inspected and considered to be free from quarantine pests and practically free from injurious pests according to the sanitary requirements of the importing country.
- ~~24.~~ 25. "Pure seed" means agricultural and vegetable seed, exclusive of inert matter, and all other seed not of the kind or variety being considered.
- ~~25.~~ 26. "Record" means all information relating to lot identification, source, origin, variety, amount, processing, testing, labeling, distribution, and file sample of the seed.
27. "Selection" means a subgroup of a variety and commonly used terms include line selection, clonal selection, or strain selection.
- ~~26.~~ 28. "Stop-sale" means an administrative order provided by law restraining the sale, use, disposition, and movement of a definite amount of seed.
- ~~27.~~ 29. "Treated" means a seed has received an application of a substance, or a claim has been made that the seed has been subjected to a process.
- ~~28.~~ 30. "Tree and shrub seed" includes seed of woody plants commonly known and sold as tree and shrub seed in this state.
- ~~29.~~ 31. "Type" means a group of variety so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.

- ~~30-~~ 32. "Variety" means a subdivision of a kind that is distinct, uniform, and stable. "Distinct" means the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all varieties of public knowledge. "Uniform" means the variations in essential and distinctive characteristics are describable. "Stable" means the variety will remain unchanged in its essential and distinctive characteristics and uniformity when reproduced or reconstituted as required by the different categories of varieties.
- ~~34-~~ 33. "Vegetable seed" means a seed of a crop that is grown in a garden or on a truck farm, and which is generally known and sold under the name of vegetable seed within this state.
- ~~32-~~ 34. "Weed seed" means the seed of a plant generally recognized as a weed within this state, including noxious weed seed.

**SECTION 2. AMENDMENT.** Section 4-10-01 of the North Dakota Century Code is amended and reenacted as follows:

**4-10-01. Definitions.** In this chapter, unless the context otherwise requires:

1. "Agent" or "agents", when used to indicate or refer to the commissioner's agent or agents, means the commissioner's deputies, inspectors, representatives, agents, or other assistants as the case requires.
2. "Certified" means the potatoes were randomly inspected and found to meet the rules ~~and regulations~~ of the ~~state~~ seed department at the time of inspection.
3. "Closed container", or its plural form, means any container which shall be sewed, tied, sealed, glued, nailed, or otherwise closed in a practical or secure manner for handling.
4. "Commissioner" means the state seed commissioner.
5. "Inspection" means a random sample of potato plants or potato tubers were examined according to the rules of the ~~state~~ seed department or according to the instructions of the United States department of agriculture, food safety and quality service.
6. "Label", and its various grammatical forms, when used as a noun means any tag, label, brand, or device attached to, or written, stamped, printed, or stenciled on, any container and carrying a term or terms setting forth the grade, condition, quality, weight, variety, or class of the potatoes or other produce therein contained, and when used as a verb means the act or the fact of the use of the aforesaid labeling items and methods in connection with potatoes or other produce, and when used as an adjective, its descriptive meaning must be interpreted from its use and meaning as a noun and verb as herein prescribed.
7. "Other produce" means natural products of the farm, garden, and orchard, exclusive of grain, true seeds, livestock, and livestock products.
8. "Potatoes" means what is commonly called and known as white or Irish potatoes.

9. "Selection" means a subgroup of a variety of potato and is commonly referred to as line selection, clonal selection, or strain selection.
10. "State seed department" means the seed department of the state of North Dakota.
- ~~40-~~ 11. "Variety" means a plant group within a single botanical taxon of the lowest-known rank which, without regard to whether the conditions for plant variety protection are met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, distinguished from any other plant grouping by the expression of at least one characteristic, and considered as a unit with regard to the suitability of the plant grouping for being propagated unchanged. A variety may be represented by seed, transplants, plants, tubers, tissue culture, plantlets, and other matter.

**SECTION 3. AMENDMENT.** Section 4-10-05 of the North Dakota Century Code is amended and reenacted as follows:

**4-10-05. Labeling, branding, tagging potatoes in closed containers.**

1. Every ~~closed~~ container packed with potatoes grown in North Dakota, being transported, or offered for sale or consignment must bear ~~upon the outside thereof~~, either by brand, tag, or label, in plain letters and figures, the net weight when packed and correct grade designation. Potatoes being shipped for processing or repacking are exempt of this requirement.
2. When an individual shipment is made from such towns or stations at which regular inspection service is not maintained, and when such shipments cannot be so routed as to be stopped in transit for inspection at a town or station at which inspection service can be provided, or when due to unforeseen circumstances which make it physically impossible for an inspector to perform such inspection, then the commissioner, or ~~his~~ the commissioner's agent, may waive the inspection and labeling requirements provided in this section for such individual shipment.
3. The commissioner shall, by regulation, prescribe the general location of the labeling on the container and the minimum and maximum size of the letters and figures used in the labeling of the potatoes as herein provided.
4. After the grade inspection of the potatoes has been completed, if the official inspector finds that they are labeled properly according to the provisions of this chapter, the inspector shall furnish to the shipper or owner of the potatoes a signed certificate indicating that the shipment of potatoes is correctly labeled.
5. A vendor of seed may not alter the label or certificate furnished by the inspector under subsection 4.
6. A person in this state may not sell, offer for sale, transport for sale, or store with intent to sell within this state certified potato seed that is not labeled in accordance with this chapter.

**SECTION 4. AMENDMENT.** Section 4-42-11 of the North Dakota Century Code is amended and reenacted as follows:

**4-42-11. Warranties or representations regarding seeds or crops.** The commission, the commissioner, and the department make no warranties or representations of any kind, either expressed or implied, including warranties of merchantability, fitness for a particular purpose, or absence of disease, as to seed or crop that is inspected, analyzed, or verified under this chapter.

**SECTION 5. REPEAL.** Section 4-10-11 of the North Dakota Century Code is repealed.

Approved March 28, 2007

Filed March 28, 2007

**CHAPTER 58****SENATE BILL NO. 2128**

(Agriculture Committee)

(At the request of the State Seed Commission)

**SEED REGULATION**

AN ACT to amend and reenact subsection 3 of section 4-09-06 and sections 4-09-14, 4-09-15, 4-09-16, 4-09-17.1, 4-42-02, and 4-42-07 of the North Dakota Century Code, relating to examination of seed, prohibitions, exemptions, plant variety protection, genetic identity, and identity preservation; and to repeal section 4-11-10 of the North Dakota Century Code, relating to potato dealer agent identification cards.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 4-09-06 of the North Dakota Century Code is amended and reenacted as follows:

3. Any person involved in any way in the handling, transportation, storage, planting, buying, or selling of seed shall cooperate with the commissioner and shall render all possible assistance to aid the commissioner in the carrying out and enforcement of this chapter.

**SECTION 2. AMENDMENT.** Section 4-09-14 of the North Dakota Century Code is amended and reenacted as follows:

**4-09-14. Prohibitions.**

1. A person may not sell, offer for sale, expose for sale, transport for sale, or hold or store with the intent to sell, any agricultural, vegetable, flower, or tree and shrub seed within this state:
  - a. Unless for agricultural seed, a test to determine the percentage of germination required under section 4-09-10 has been completed within a nine-month period, exclusive of the calendar month in which the test was completed or the seed is offered for sale beyond the sell by date exclusive of the calendar month in which the seed was to have been sold;
  - b. Unless for flower, vegetable, native grass, or forb seed, a test to determine the percentage of germination required under sections 4-09-10, 4-09-11, and 4-09-11.1 has been completed within a twelve-month period, exclusive of the calendar month in which the test was completed;
  - c. Unless for cool season lawn and turf grasses, including Kentucky bluegrass, red fescue, chewings fescue, hard fescue, tall fescue, perennial rye grass, intermediate rye grass, annual rye grass, colonial bent grass, creeping bent grass, and mixtures or blends of those grasses, a test to determine the percentage of germination has been completed within a fifteen-month period, exclusive of the calendar month in which the test was completed;

- d. Unless for tree, shrub, agricultural, flower, wildflower, or vegetable seed packaged in a hermetically sealed container under conditions as defined by the commissioner, a test to determine the percentage of germination has been completed within a thirty-six-month period after the last day of the month that the seed was tested for germination before packaging. However, if seed in a hermetically sealed container is offered for sale more than thirty-six months after the last day of the month in which the seed was tested before packaging, the seed must be retested within a twelve-month period, exclusive of the calendar month in which the retest was completed;
  - e. If the seed is not labeled in accordance with this chapter or bears false or misleading labeling;
  - f. If there has been false or misleading advertising in connection with the seed;
  - g. If the seed contains prohibited noxious weed seeds;
  - h. Unless for agricultural or vegetable seed, the seed is labeled to show the rate of occurrence of restricted noxious weed seeds, as required under sections 4-09-10 and 4-09-11;
  - i. If the seed is designated, offered, represented, or advertised under any variety name or identification other than the variety name by which the seed was known originally;
  - j. If the seed contains restricted noxious weed seeds in excess of twenty-five seeds per pound [453.59 grams]; or
  - k. If the percentage by weight of all weed seeds in the seed exceeds one percent.
2. ~~Any person may submit to the commissioner a sample of any seed which the person claims to be a new variety, distinct from any commonly known variety of the seed, together with a proposed, distinctive name. The commissioner, within one year, shall make any test the commissioner considers necessary, and if the commissioner finds as a result of the test that the seed or plant is of a new variety, distinct from any known variety of the seed and that the proposed name will properly distinguish the seed from any and all other varieties, the commissioner shall issue to the applicant a permit to designate the seed by the proposed name.~~
  3. The purchaser, vendor, or any person receiving any seed shipped into this state from without the state shall have the same labeled in accordance with this chapter. Certain standardized grades and labeling of seed in use elsewhere may be permitted by the commissioner in connection with shipments of seed into this state from points outside this state in lieu of the labeling provided for in this chapter.
4. 3. A person in this state may not:

- a. Detach, alter, deface, or destroy any label provided for in this chapter or to alter or substitute seed in any manner with the intent to defeat the purpose of this chapter;
- b. Disseminate any false or misleading advertisement concerning agriculture or vegetable seed in any manner or by any means;
- c. Hinder or obstruct in any way any authorized person in the performance of the person's duties under this chapter;
- d. Fail to comply with a "stop-sale" order;
- e. Use on seed labels or tags, or to use or attach to literature, or to state in any manner or form of wording designed as a "disclaimer" or "nonwarranty" clause with the intent to disclaim responsibility of the vendor of the seed for the data on the label required by law;
- f. Use the words "type" or "trace" on any labeling in connection with the name and description of any agricultural and vegetable seed;
- g. Move or otherwise handle or dispose of any lot of seed held under a "stop-sale" order, except with the written permission of the commissioner and only for the purpose specified in this written permission;
- h. Use the name of the department or the name of the official laboratory for advertising purposes in connection with seed analyzed or tested by the department or official laboratory, except in the case of registered or certified seed; or
- i. Plant any seed labeled "for vegetative cover only" with the intent to harvest for seed or grain.

**SECTION 3. AMENDMENT.** Section 4-09-15 of the North Dakota Century Code is amended and reenacted as follows:

**4-09-15. Exemptions.**

1. This chapter does not apply to:
  - a. Potatoes, whether sold or intended for food, manufacturing, or planting purposes.
  - b. Seed or grain that is not intended for planting purposes. The seller shall indicate on a form provided by the seller the purpose for which the seed or grain is purchased. The form must be available for inspection by the commissioner. It is unlawful for the seller or buyer to make a false representation as to the use of the seed or grain. A farmer selling the farmer's own seed or grain to a commercial establishment is exempt from the recordkeeping requirements of this subsection.
  - c. Seed stored by or consigned to a seed cleaning or conditioning plant for the purpose of cleaning or conditioning. However, any labeling or other representation made with respect to uncleaned or unconditioned seed is subject to the requirements of this chapter.



- d. A common carrier with respect to any seed transported or delivered for transportation in the ordinary course of business.
  - e. A farmer who grows the farmer's own seed and sells only the farmer's own seed and does not advertise or use a third party as an agent or broker to bring buyer and seller together. However, a variety for which a certificate plant variety protection has been applied for or issued is not exempt from this chapter. The sale or transfer of protected varieties between farmers for the purpose of planting without the approval of a variety owner or developer is prohibited.
2. A person is not subject to the penalties of this chapter for having sold, exposed for sale, or transported for sale in this state any agricultural, vegetable, flower, or tree and shrub seed that was incorrectly labeled or incorrectly represented as to kind, variety, or origin and which could not be identified through examination, unless the person has failed to obtain an invoice or grower's declaration stating the kind, or kind and variety, and origin, if required, or has failed to take other precautions as may have been necessary to ensure that the seed was properly identified.

**SECTION 4. AMENDMENT.** Section 4-09-16 of the North Dakota Century Code is amended and reenacted as follows:

**4-09-16. Certified seed.** The commissioner shall:

1. Establish a seed certification system for this state and adopt rules governing application for service, acceptance of suitable seed stocks for the production of a foundation, registered, certified, or inspected crop, field inspection, bin inspections, harvesting, handling, storage, conditioning, and preparation and handling of the seed for market.
2. ~~Designate~~ Accept for certification kinds, varieties, selections, and names of seed stocks, and establish standards of quality, degree of disease infection, and amounts of any admixtures, foreign seeds, noxious weeds, or other weed seeds that are allowed in any lot or stock of seed, which may be or become eligible for field inspection or for final certification of the seed crop.
3. Accept from any person a sample of seed which the person claims to be a new variety, distinct from any commonly known variety of the seed, together with a proposed, distinctive name. The commissioner shall determine the eligibility of a variety for certification based on factors including whether:
  - a. The variety has been accepted into a certification program by a national-designated or state-designated certification authority according to established rule or regulation.
  - b. The variety or selection is sufficiently distinguishable from existing varieties to allow for seed certification.
  - c. The variety or selection has been released by a public or private industry breeding program through an acceptable release process or policy.

- d. Technical information regarding physical traits or genetic markers of the variety or selection has been provided to the commissioner for use in field and laboratory certification programs.
4. Prescribe all labels, seals, certificates, or similar statements that must be used for, or in relation to, any seed, or the various kinds and qualities grown, handled, stored, held for sale, sold, or offered or exposed for sale in this state as "breeders", "foundation", "registered", or "certified" seed, and shall specify what words, terms, or figures the labels, seals, certificates, or the containers of the seed must bear.
- 4- 5. Cooperate with the managers of any seed conditioning plants, or any commercially established seed firm, or any person within or outside of the state having proper facilities and equipment to store, condition, and otherwise handle seed which is eligible for certification, for the purposes of handling and marketing "breeders", "foundation", "registered", or "certified" seed.
- 5- 6. Cooperate in the selection, testing, and growing of seed for certification purposes and in the arrangement for increase of foundation seed stocks suitable for the production of certified seed.
- 6- 7. Establish an equitable schedule of fees and charges, which must be uniform throughout the state, for inspecting, testing, analyzing, and recording the seed, and for other work and duties incident to the growing, handling, marketing, and certifying of North Dakota seed, and shall collect all the fees and charges.

**SECTION 5. AMENDMENT.** Section 4-09-17.1 of the North Dakota Century Code is amended and reenacted as follows:

**4-09-17.1. Plant Variety Protection Act.** Any seed advertised, offered for sale, or sold by variety name and for which a certificate of plant variety protection has been issued under the Plant Variety Protection Act, as amended [Pub. L. 91-577; 84 Stat. 1551; 7 U.S.C. 2481 et seq., effective as of ~~July 4, 2005~~ July 1, 2007], as being for sale only as a class of certified seed must be certified by an official seed certifying agency in order for the seed to be advertised, offered for sale, or sold by variety name in the state of North Dakota. Seed from a certified lot may be labeled as to variety name when used in a blend or mixture by or with approval of the owner of the variety.

**SECTION 6. AMENDMENT.** Section 4-42-02 of the North Dakota Century Code is amended and reenacted as follows:

**4-42-02. Commissioner - Genetic identity - Physical traits - Analysis and verification.** The commissioner ~~shall~~ may establish procedures for inspecting, analyzing, and verifying the genetic identity or physical traits of seeds or crops. The procedures ~~must~~ may address the compilation of all necessary documentation and other administrative functions.

**SECTION 7. AMENDMENT.** Section 4-42-07 of the North Dakota Century Code is amended and reenacted as follows:

**4-42-07. Identity preservation - ~~Segregation~~ - Traceability.** The commissioner ~~shall~~ may establish a procedure for the identity preservation;

segregation, and traceability of seeds or crops inspected or analyzed under this chapter.

**SECTION 8. REPEAL.** Section 4-11-10 of the North Dakota Century Code is repealed.

Approved April 9, 2007  
Filed April 10, 2007

**CHAPTER 59****HOUSE BILL NO. 1185**

(Representatives Solberg, DeKrey, S. Meyer, Onstad)  
(Senators Heitkamp, O'Connell)

**DRY PEA AND LENTIL ASSESSMENT REFUNDS**

AN ACT to amend and reenact section 4-10.7-07 of the North Dakota Century Code, relating to the powers and duties of the North Dakota dry pea and lentil council.

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

**SECTION 1. AMENDMENT.** Section 4-10.7-07 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.7-07. Council powers and duties.** In the administration of this chapter, 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 purposes of this chapter.
2. Expend funds collected pursuant to this chapter for its administration.
3. Appoint, employ, bond, discharge, fix the compensation for, and prescribe the duties of such administrative, clerical, technical, and other personnel as it deems 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 chapter, and to sue and be sued in the name of the council.
6. Formulate the general policies and programs of markets and industries for the utilization of dry peas and lentils grown within the state.
7. Enter a reciprocal agreement with the governmental entity that is responsible for administration of the dry pea and lentil assessment in another state or province and provide for:
  - a. The return by that governmental entity of any assessment charged on dry peas and lentils grown in this state; and
  - b. The return by the council of any assessment charged on dry peas and lentils grown in another state or province.

Approved March 6, 2007

Filed March 7, 2007

**CHAPTER 60****SENATE BILL NO. 2117**

(Senator Wanzek)

(At the request of the North Dakota Potato Council)

**POTATO PRODUCTION CONTRACTING FAIR PRACTICES**

AN ACT to provide for fair practices in potato production contracting; and to provide a penalty.

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

**SECTION 1. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Buyer" means a person, group of persons, organization, or entity that in the ordinary course of business buys potatoes or potato byproducts grown in this state or who contracts with a potato producer to grow potatoes in this state.
2. "Potatoes" means potatoes or potato byproducts produced for use in or as food, seed, feed, or other byproducts of the farm for the same or similar use.
3. "Producer" means a person that produces or causes to be produced potatoes by contracting with a buyer or processor to provide management, labor, machinery, facilities, or any production input for the production of potatoes.

**SECTION 2. Unfair acts and practices prohibited.** A buyer may not engage in any of the following acts or practices, defined as unfair acts or practices in connection with a potato production contract or purchase involving potatoes:

1. Use of coercion, intimidation, the threat of retaliation or the threat of contract termination, cancellation, or nonrenewal to impose, demand, compel, or dictate terms, payment or manner of payment, or the signing of a contract by a potato producer.
2. Use of coercion, intimidation, the threat of retaliation, or the threat of contract termination, cancellation, or nonrenewal in order to require a producer to make capital improvements such as buildings or equipment.
3. To interfere, restrain, or coerce a producer in the exercise of the right to join, form, or assist a producer bargaining cooperative or association.
4. To refuse to deal with a producer because of the exercise of the right to join and belong to a producer bargaining cooperative or association.
5. To refuse to provide to the producer, upon request, the statistical information and the data used to determine compensation paid to the producer for settlement.

6. To refuse to allow a producer or the producer's designated representative to observe, by actual observation at the time of weighing, the weights and measures used to determine the producer's compensation at settlement.
7. To use the performance of any other producer to determine the settlement of a producer.
8. To refuse to bargain with an established producer bargaining cooperative or association formed for the purpose of negotiating contracts and agreements.

**SECTION 3. Civil liability for damages from violation.** A person who engages in an unfair act or practice as defined in this Act, is liable to a producer for all damages caused to the producer by the unfair act or practice.

**SECTION 4. Good faith - Damages for violation - Penalty.** There is an implied promise of good faith as defined in subsection 19 of section 41-09-11, by all parties to a potato production contract. In an action to recover damages, if the court or a jury finds that there has been a violation of this provision, in addition to other damages authorized by law, attorney fees and court costs may be awarded.

**SECTION 5. Recapture of capital investment required by a potato production contract.**

1. A contractor may not terminate or cancel a contract that requires a producer to make a capital investment in buildings or equipment that cost one hundred thousand dollars or more and have a useful life of five or more years until:
  - a. The producer has been given written notice of the intention to terminate or cancel the contract at least one hundred eighty days before the effective date of the termination or cancellation, or as provided in subsection 3; and
  - b. The producer has been reimbursed for damages incurred by an investment in buildings or equipment that was made for the purpose of meeting minimum requirements of the contract.
2. Except as provided in subsection 3, if a producer fails to comply with the provisions of a contract that requires a capital investment subject to subsection 1, a contractor may not terminate or cancel that contract until:
  - a. The contractor has given written notice with all the reasons for the termination or cancellation at least ninety days before termination or cancellation, or as provided in subsection 3; and
  - b. The recipient of the notice fails to correct the reasons stated for termination or cancellation in the notice within sixty days of receipt of the notice.
3. The one hundred eighty-day notice period under subsection 1, and the ninety-day notice period and the sixty-day notice period under subsection 2, are waived and the contract may be cancelled or

terminated immediately if the alleged grounds for termination or cancellation are:

- a. Voluntary abandonment of the contract relationship by the producer; or
- b. Conviction of the producer of an offense directly related to the business conducted under the contract.

Approved April 12, 2007  
Filed April 13, 2007

## CHAPTER 61

### HOUSE BILL NO. 1164

(Representatives Kingsbury, Aarsvold, Herbel)  
(Senators Olafson, Wanzek)

### NORTHERN CROPS COUNCIL MEMBERSHIP

AN ACT to amend and reenact section 4-14.2-02 of the North Dakota Century Code, relating to membership of the northern crops council.

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

**SECTION 1. AMENDMENT.** Section 4-14.2-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **4-14.2-02. Northern crops council - Establishment - Chairman - Meetings - Compensation.**

1. The northern crops council is established. The council shall establish policies for the operation of the northern crops institute. The council consists of:
  - a. The president of North Dakota state university of agriculture and applied science or the president's designee.
  - b. A representative selected by the North Dakota wheat commission.
  - c. A representative selected by the North Dakota oilseed council.
  - d. A representative selected by the North Dakota barley council.
  - e. A representative selected by the North Dakota soybean council.
  - f. The agriculture commissioner or the commissioner's designee.
  - g. ~~Four~~ Five to ~~five~~ seven producers of northern crops selected by the members designated in subdivisions a through f.
  - h. Up to ~~two~~ four representatives of industries that process northern crops selected by the members designated in subdivisions a through f.
2. The term of office for each member of the council, except the president of North Dakota state university of agriculture and applied science and the agriculture commissioner, is three years, and those members are limited to two 3-year terms. Each term of office begins with the first reorganizational meeting after the date of appointment.
3. The chairman of the council must be a member of the council elected annually by a majority vote of the council. Provided, the members designated in subdivisions a and f of subsection 1 are not eligible to serve as chairman.



4. The council shall meet at least three times annually at such times and places as must be determined by the council and may meet in special meeting upon such call and notice as may be prescribed by rules adopted by the council. A council member unable to attend a meeting of the council may be represented by a person who has a written proxy from the member.

Approved March 28, 2007  
Filed March 28, 2007

**CHAPTER 62****HOUSE BILL NO. 1066**

(Appropriations Committee)

(At the request of the State Board of Higher Education)

**STATE FORESTER RESERVE ACCOUNT BALANCE**

AN ACT to amend and reenact section 4-19-01.2 of the North Dakota Century Code, relating to the balance in the state forester reserve account.

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

<sup>22</sup> **SECTION 1. AMENDMENT.** Section 4-19-01.2 of the North Dakota Century Code is amended and reenacted as follows:

**4-19-01.2. State forester reserve account.** The state forester reserve account is established as a special account in the state treasury. All moneys received for charges in excess of the cost of production of seedlings from the state nursery must be deposited in the reserve account. The state forester may use the reserve account after receiving approval from the legislative council's budget section and within limits of legislative appropriations for expenses relating to nursery seedling losses or other unanticipated events requiring additional funding as determined necessary by the state forester. If the balance of the state forester reserve account exceeds ~~five hundred thousand~~ one million dollars, charges for state nursery seedlings must not exceed estimated production costs until the account balance is less than ~~two~~ seven hundred thousand dollars, at which time the state forester may charge one hundred ten percent of production costs.

Approved March 7, 2007

Filed March 8, 2007

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<sup>22</sup> Section 4-19-01.2 was also amended by section 1 of Senate Bill No. 2028, chapter 63.

**CHAPTER 63****SENATE BILL NO. 2028**

(Legislative Council)  
(Budget Section)

**BUDGET SECTION REPORTING ELIMINATION**

AN ACT to amend and reenact sections 4-19-01.2, 15.1-02-14, 49-21-31, 54-59-19, 54-60-10, and 65-02-05.1 of the North Dakota Century Code, relating to budget section approval of state forester reserve account spending and remove required reports to the budget section and the legislative audit and fiscal review committee.

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

<sup>23</sup> **SECTION 1. AMENDMENT.** Section 4-19-01.2 of the North Dakota Century Code is amended and reenacted as follows:

**4-19-01.2. State forester reserve account.** The state forester reserve account is established as a special account in the state treasury. All moneys received for charges in excess of the cost of production of seedlings from the state nursery must be deposited in the reserve account. The state forester may use the reserve account ~~after receiving approval from the legislative council's budget section~~ and within limits of legislative appropriations for expenses relating to nursery seedling losses or other unanticipated events requiring additional funding as determined necessary by the state forester. If the balance of the state forester reserve account exceeds five hundred thousand dollars, charges for state nursery seedlings must not exceed estimated production costs until the account balance is less than two hundred thousand dollars, at which time the state forester may charge one hundred ten percent of production costs.

**SECTION 2. AMENDMENT.** Section 15.1-02-14 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-02-14. Duplicative payments - Transfer - Distribution - Report to budget section.** If the superintendent of public instruction receives any federal or other moneys to pay programmatic administrative expenses for which the superintendent received a state general fund appropriation, the superintendent shall transfer the moneys to the state tuition fund. This section does not apply if the superintendent is required by federal law or by the terms of a grant to employ additional personnel. ~~The superintendent shall report annually to the budget section of the legislative council regarding any transfers under this section.~~

**SECTION 3. AMENDMENT.** Section 49-21-31 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>23</sup> Section 4-19-01.2 was also amended by section 1 of House Bill No. 1066, chapter 62.

**49-21-31. Performance assurance fund - Continuing appropriation - Report to budget section.** The performance assurance fund is a special fund in the state treasury. The commission shall deposit payments received by the commission under the performance assurance plan in the performance assurance fund until the balance of the fund equals one hundred thousand dollars. Up to one hundred thousand dollars per biennium of moneys in the fund are appropriated on a continuing basis to the commission to monitor the operation and effect of the performance assurance plan. All the payments received by the commission in excess of the one hundred thousand dollars balance in the performance assurance fund must be deposited in the general fund. ~~The commission shall report annually to the budget section of the legislative council with respect to the payments received under the plan and the expenditures from the performance assurance fund.~~

<sup>24</sup> **SECTION 4. AMENDMENT.** Section 54-59-19 of the North Dakota Century Code is amended and reenacted as follows:

**54-59-19. Information technology department annual report.** The department shall prepare and present an annual report to the information technology committee. In addition to the presentation of the annual report to the information technology committee, the department shall present a summary of the annual report to the budget section ~~and to the legislative audit and fiscal review committee~~. The report must contain:

1. A list of major projects started, ongoing, and completed during the year including related budgeted and actual costs and the estimated implementation date for each project as well as the actual implementation date for completed projects.
2. A list of all projects for which financing agreements have been executed.
3. Information regarding evaluations of cost-benefit analyses for completed projects.
4. A comparison of the department's rates charged for services compared to rates charged for comparable services in other states and in the private sector.
5. Information regarding the information technology plans including the department's plan review process, the number of plans reviewed, and the number of plans approved.
6. A description of the benefits to the state resulting from its investment in information technology.

<sup>25</sup> **SECTION 5. AMENDMENT.** Section 54-60-10 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>24</sup> Section 54-59-19 was also amended by section 5 of Senate Bill No. 2037, chapter 491, and section 2 of Senate Bill No. 2118, chapter 492.

<sup>25</sup> Section 54-60-10 was repealed by section 9 of House Bill No. 1137, chapter 493.

**54-60-10. Career guidance and job opportunities - Internet web site - Fees - Continuing appropriation.** The department may provide career guidance and job opportunity services through an internet web site. If the department contracts with a third party for the provision of internet web site services under this section, upon the expiration of that contract the department shall request bids for the maintenance of this internet web site and shall give consideration to bids of North Dakota businesses. The department shall deposit in the department's operating fund any moneys received by the department as subscriptions, commissions, fees, or other revenue from the internet web site. Moneys deposited in the operating fund under this section of up to one hundred thirty thousand dollars per biennium are appropriated to the department on a continuing basis for payment of expenses related to administration of the internet web site. Any additional amounts deposited in the operating fund during a biennium under this section may be spent pursuant to legislative appropriations or with budget section approval. ~~The department shall report annually to the budget section of the legislative council regarding moneys spent under this section.~~

**SECTION 6. AMENDMENT.** Section 65-02-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**65-02-05.1. Building maintenance account - Continuing appropriation.** There is a building maintenance account within the workforce safety and insurance fund, to which the organization shall deposit all building rental proceeds if the organization builds a building that includes rental space for other state entities. The moneys in the account are appropriated on a continuing basis to the organization to pay bond principal and interest payments, operating, maintenance, repair, and payments in lieu of taxes expenses of the building and grounds. This account may be used only for the purposes identified in this section. The organization may either hire or contract for building maintenance and repair services anticipated by this section. ~~The organization shall report to the budget section of the legislative council on a biennial basis on all revenues deposited into this account and expenditures made from the account.~~

Approved March 7, 2007  
Filed March 8, 2007

**CHAPTER 64****SENATE BILL NO. 2105**

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

**DAIRY PRODUCTS REGULATION**

AN ACT to amend and reenact sections 4-30-18, 4-30-20, 4-30-36, 4-30-36.2, 4-30-36.3, and 4-30-36.4 of the North Dakota Century Code, relating to dairy products regulations.

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

**SECTION 1. AMENDMENT.** Section 4-30-18 of the North Dakota Century Code is amended and reenacted as follows:

**4-30-18. Sampling and testing procedures - Equipment - Supplies.** The laboratory procedures, equipment, chemicals, and other apparatus or substances used in the sampling, hauling, or testing of milk or milk products must conform to that described in the ~~seventeenth~~ eighteenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association, incorporated, a copy of which shall be on file in the department. No equipment, chemicals, or other apparatus or substance used in the sampling, hauling, or testing of milk or milk products which is not in conformance with the requirements of this chapter may be sold or offered for sale. The commissioner through the adoption of rules may alter, amend, or prohibit any specific requirement of this section and may approve other sampling, hauling, or testing procedures or equipment. The commissioner, where appropriate, may check calibration of farm bulk milk tanks and equipment.

**SECTION 2. AMENDMENT.** Section 4-30-20 of the North Dakota Century Code is amended and reenacted as follows:

**4-30-20. Sampling of milk.** Every purchaser of milk from a dairy producer shall collect a minimum sample of two ounces [59.15 milliliters] from each bulk tank of milk received from a producer. Samples must be collected and maintained in accordance with those procedures contained in the ~~seventeenth~~ eighteenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association, incorporated. Records must be kept which readily identify the sample with those items used to determine payment for the milk. Such items must include weight, butterfat content, protein, solids-not-fat, and the total amount of money paid for the milk.

**SECTION 3. AMENDMENT.** Section 4-30-36 of the North Dakota Century Code is amended and reenacted as follows:

**4-30-36. Standards for grade A milk and milk products - Adoption of amendments.** Only grade A milk may be sold as fluid beverage for human consumption. The minimum standards for milk and milk products designated as grade A are the same as the minimum requirements of the "Grade A Pasteurized Milk Ordinance, ~~2003~~ 2005 Revision, Public Health Service, Food and Drug Administration" which includes provisions from the "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey - Supplement 1 to the Grade A PMO"

and all supplements added thereto. The commissioner may adopt as department regulations other standards in addition to any amendments, supplements to, or new editions of the milk ordinance which are in the interest of public safety, wholesomeness of product, consumer interest, sanitation, good supply, salability, and promotion of grade A milk and milk products.

**SECTION 4. AMENDMENT.** Section 4-30-36.2 of the North Dakota Century Code is amended and reenacted as follows:

**4-30-36.2. State milk sanitation rating and sampling surveillance officer - Duties - Guidelines.** The state milk sanitation rating and sampling surveillance officer is responsible for the rating and certification of milk and dairy products. The rating and certification of milk and dairy products must be in accordance with the procedures outlined in the public health service/food and drug administration publication entitled "Methods of Making Sanitation Ratings of Milk Shippers - ~~2003~~ 2005 Revision, Edition" and the sampling of milk and dairy products must be in accordance with the guidelines recommended in the ~~seventeenth~~ eighteenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association.

**SECTION 5. AMENDMENT.** Section 4-30-36.3 of the North Dakota Century Code is amended and reenacted as follows:

**4-30-36.3. Milk laboratory evaluations officer - Duties - Guidelines.** The milk laboratory evaluations officer is responsible for the certification and evaluation of milk and dairy products laboratories within the state. Evaluations and certification of milk laboratories must be made in accordance with the ~~seventeenth~~ eighteenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association and the procedures outlined in the public health service/food and drug administration publication entitled "Evaluation of Milk Laboratories - ~~4995~~ 2005 Edition".

**SECTION 6. AMENDMENT.** Section 4-30-36.4 of the North Dakota Century Code is amended and reenacted as follows:

**4-30-36.4. Grade A pasteurized milk ordinance.** Dairy producers, processors, and manufacturers shall comply with the "Grade A Pasteurized Milk Ordinance, ~~2003~~ 2005 Revision, Public Health Service, Food and Drug Administration" and its supplements and follow the standards set by the "Procedures Governing the Cooperative State-Public Health Service Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, ~~2003~~ 2005 Revision".

Approved April 5, 2007  
Filed April 5, 2007

**CHAPTER 65****SENATE BILL NO. 2107**

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

**AGRICULTURAL EXPORT CERTIFICATION FEES**

AN ACT to amend and reenact section 4-33-12 of the North Dakota Century Code, relating to deposit of fees for agricultural export certification services.

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

**SECTION 1. AMENDMENT.** Section 4-33-12 of the North Dakota Century Code is amended and reenacted as follows:

**4-33-12. Authority for domestic and export certification.** The commissioner may inspect any plant and plant product, when offered for export or shipment from within the state and to certify to shippers and interested parties as to the freedom of such products from injurious pests according to the ~~sanitary~~ phytosanitary requirements of other states and foreign countries. Authority for inspection and certification under this section is not limited to plants defined in section 4-33-01. The commissioner may make reasonable charges and use any means necessary to accomplish this objective. A portion of the fees collected may be deposited in the commissioner's operating fund equivalent to the amount that the United States department of agriculture assesses the department for federal plant export certificates issued by the commissioner. A certificate may be withheld or not issued if the product does not meet ~~sanitary~~ phytosanitary or import requirements and if all North Dakota licensing and bonding requirements have not been met. Consignee names and addresses on phytosanitary certificates are confidential.

Approved March 5, 2007

Filed March 6, 2007



**CHAPTER 66****SENATE BILL NO. 2095**

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

**PESTICIDE DEFINITIONS**

AN ACT to amend and reenact section 4-35-05 of the North Dakota Century Code, relating to pesticide definitions; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 4-35-05 of the North Dakota Century Code is amended and reenacted as follows:

**4-35-05. Definitions.** As used in this chapter:

1. "Animal" means all vertebrate and invertebrate species, including humans and other mammals, birds, fish, and shellfish.
2. "Antidote" means a practical treatment in case of poisoning and includes first-aid treatment.
3. "Applicator" means any person who applies a pesticide to land.
4. "Beneficial insects" means those insects that, during their life cycle, are effective pollinators of plants, are parasites, or predators of pests.
5. "Certified applicator" means any individual who is certified under this chapter as authorized to use or supervise the use of any pesticide that is classified for restricted use.
6. "Commercial applicator" ~~means an applicator, whether or not the applicator is a private applicator with respect to some uses, who uses or supervises the use of a pesticide, whether classified as restricted or general use, for any purpose or on any property, other than as provided by subsection 26~~ means a person who by contract or for hire engages in the business of applying pesticides for compensation to the land of another by aerial, ground, hand, or any other equipment. The term "commercial applicator" does not include a person using a pesticide for a private agricultural purpose unless that person is being compensated for the pesticide application.
7. "Dealer" means any person who sells a pesticide to an end user.
8. "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.
9. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissue.

10. "Device" means any instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life, other than human and other than bacteria, virus, or other micro-organism on or in living humans or other living animals, but not including equipment used for the application of pesticides when sold separately therefrom.
11. "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver, or supply pesticides in this state.
12. "Environment" includes water, air, land, and all plants and humans and other animals living therein, and the interrelationships which exist among these.
13. "Equipment" means any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in such land. The term does not include any pressurized hand-sized household apparatus used to apply any pesticide, or any equipment or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application.
14. "Fungus" means any non-chlorophyll-bearing thallophytes, i.e., any non-chlorophyll-bearing plant of a lower order than mosses and liverworts as, for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living humans or other living animals, and except those on or in processed food, beverages, or pharmaceuticals.
15. "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class of insecta, comprising six-legged, usually winged forms, and to other allied classes of arthropods whose members are wingless and usually have more than six legs.
16. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
17. "Labeling" means the label and all other written, printed, or graphic matter:
  - a. Accompanying the pesticide or device; and
  - b. To which reference is made on the label or in literature accompanying or referring to the pesticide, except when accurate nonmisleading references are made to current official publications of the board; the United States environmental protection agency; the United States departments of agriculture and interior; the United States department of health and human services; state agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.
18. "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery,

appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

19. "Mixture" means a diluted pesticide combination.
20. "Nematode" means invertebrate animals of the phylum nemathelminthes, and class nematoda, i.e., unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts, may also be called nemas or eelworms.
21. "Person" means any individual, partnership, association, fiduciary, corporation, limited liability company, or any organized group of persons, whether or not incorporated.
22. "Pest" means:
  - a. Any insect, snail, slug, rodent, nematode, fungus, or weed; or
  - b. Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism, except viruses, bacteria, or other micro-organisms on or in living humans or other living animals which are annoying or otherwise injurious or harmful to agriculture, health, and the environment.
23. "Pesticide" means:
  - a. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and
  - b. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
24. "Pesticide dealer" means any person who distributes restricted use pesticides.
25. "Plant regulator" means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or to otherwise alter the behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.
26. "Private applicator" means a certified applicator who uses or supervises the use of any pesticide that is classified for restricted use, to produce any agricultural commodity on property owned or rented by the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.
27. "Protect health and the environment" means protection against any unreasonable adverse effects on public health and the environment.
28. "Public applicator" means a ~~certified~~ an applicator who applies pesticides as an employee of a state or federal agency, municipal

corporation, public utility, hospital, privately owned golf course, nursery, greenhouse, or other governmental agency. Persons using only ready-to-use pesticides are exempt from this requirement.

29. "Ready-to-use pesticide" means a pesticide that is applied directly from its original container consistent with label directions, such as an aerosol spray can, a ready-to-use spray container, bait packs, or other types of containers that do not require mixing or loading before application.
30. "Restricted use pesticide" means any pesticide formulation which is classified for restricted use by the United States environmental protection agency. The term also includes a pesticide formulation classified for restricted use by the agriculture commissioner under section 19-18-05.
- ~~30.~~ 31. "Rinsate" means a diluted mixture of pesticide obtained from triple rinsing pesticide containers or from rinsing the inside and outside of spray equipment.
- ~~31.~~ 32. "Snail" or "slug" includes every harmful mollusk.
- ~~32.~~ 33. "Tank mix" means any pesticidal formulation used alone or in combination with another pesticide and mixed with a liquid carrier prior to application.
- ~~33.~~ 34. "Unreasonable adverse effects on the environment" means any unreasonable risk to humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.
- ~~34.~~ 35. "Weed" means any plant which grows where not wanted.
- ~~35.~~ 36. "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this chapter, pests, including mammals, birds, and aquatic life.

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

Approved March 5, 2007  
Filed March 6, 2007

**CHAPTER 67****SENATE BILL NO. 2228**

(Senator Klein)  
(Representative DeKrey)

**PESTICIDE DAMAGE NOTIFICATION**

AN ACT to create and enact a new section to chapter 4-35 of the North Dakota Century Code, relating to notification of alleged pesticide damage; to repeal sections 4-35-21, 4-35-21.1, and 4-35-21.2 of the North Dakota Century Code, relating to reports of loss resulting from pesticide application; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 4-35 of the North Dakota Century Code is created and enacted as follows:

**Pesticide application - Alleged property damage - Notification of applicator.**

1. a. Before a person may file a civil action seeking reimbursement for property damage allegedly stemming from the application of a pesticide, the person shall notify by certified mail the pesticide applicator of the alleged damage within the earlier of:
  - (1) Twenty-eight days from the date the person first knew or should have known of the alleged damage; or
  - (2) Before twenty percent of the crop or field allegedly damaged is harvested or destroyed.
- b. Subdivision a does not apply if the person seeking reimbursement for property damage was the applicator of the pesticide.
2. Upon notifying the applicator as required under subsection 1, the person seeking reimbursement for the alleged property damage shall permit the applicator and up to four representatives of the applicator to enter the person's property for the purpose of observing and examining the alleged damage. If the person fails to allow entry, the person is barred from asserting a claim against the applicator.

**SECTION 2. REPEAL.** Sections 4-35-21, 4-35-21.1, and 4-35-21.2 of the North Dakota Century Code are repealed.

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

Approved April 11, 2007  
Filed April 13, 2007

**CHAPTER 68****HOUSE BILL NO. 1085**

(Agriculture Committee)

(Representatives Aarsvold, D. Johnson)

(Senators Heckaman, Flakoll)

(At the request of the Agriculture Commissioner)

**PESTICIDE AND CONTAINER DISPOSAL PROGRAM**

AN ACT to create and enact a new section to chapter 4-35.2 of the North Dakota Century Code, relating to a report by the agriculture commissioner on the status of the pesticide container disposal program; to amend and reenact sections 4-35.2-01, 4-35.2-02, and 4-35.2-03 of the North Dakota Century Code, relating to making permanent law of the agricultural pesticide and pesticide container disposal program; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 4-35.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**4-35.2-01. (~~Effective through July 31, 2007~~) Pesticide and pesticide container disposal program - Pesticide container management - Compensation.**

1. The definitions contained in section 4-35-05 apply to this section.
2. In consultation with an advisory board consisting of the state health officer, director of the North Dakota state university extension service, two individuals representing agribusiness organizations, and two individuals representing farm organizations, all of whom must be selected by the agriculture commissioner, the commissioner shall continue to implement the project authorized by section 1 of chapter 77 of the 2001 Session Laws, which is known as project safe send. The purpose of the project is to:
  - a. Collect and either recycle or dispose of unusable pesticides and unusable pesticide containers. The commissioner shall provide for the establishment and operation of temporary collection sites for the pesticides and pesticide containers. The commissioner may limit the type and quantity of pesticides and pesticide containers acceptable for collection.
  - b. Promote proper pesticide container management. In consultation with the director of the North Dakota state university extension service, the commissioner shall evaluate and promote proper methods of pesticide container management, including information on the variety of pesticide containers available.
3. Any entity collecting pesticide containers or unusable pesticides shall manage and dispose of the containers and pesticides in compliance with applicable federal and state requirements. When called upon, any state agency shall assist the commissioner in implementing the project.

4. For services rendered in connection with the design and implementation of this project, the members selected by the commissioner are entitled to reimbursement for mileage and travel expenses in the same manner and for the same amounts provided for state employees and officials. Compensation and expense reimbursement must be paid from the environment and rangeland protection fund.

**SECTION 2. AMENDMENT.** Section 4-35.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**4-35.2-02. (~~Effective through July 31, 2007~~) Project scope and evaluation.** The project described in section 4-35.2-01 must occur in areas to be determined by the agriculture commissioner in consultation with the advisory board under subsection 2 of section 4-35.2-01.

**SECTION 3. AMENDMENT.** Section 4-35.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**4-35.2-03. (~~Effective through July 31, 2007~~) Project safe send pesticide and pesticide container collection - User fees.** The agriculture commissioner, in consultation with the advisory board for the project safe send pesticide and pesticide container disposal program, may charge a fee for collection of rinsate. The fees must be established at a level that will generate enough revenue to cover the cost of disposal associated with the rinsate that is collected. Collections from this fee must be deposited in the environment and rangeland protection fund.

**SECTION 4.** A new section to chapter 4-35.2 of the North Dakota Century Code is created and enacted as follows:

**Report on pesticide container disposal program.** The agriculture commissioner shall submit a biennial report to a joint meeting of the house of representatives and senate agriculture committees on the status of the pesticide container disposal program.

Approved March 6, 2007  
Filed March 7, 2007

**CHAPTER 69****SENATE BILL NO. 2099**

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

**INDUSTRIAL HEMP PROCESSING**

AN ACT to amend and reenact subsections 1 and 3 of section 4-41-02 of the North Dakota Century Code, relating to industrial hemp; to provide a continuing appropriation; and to declare an emergency.

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

<sup>26</sup> **SECTION 1. AMENDMENT.** Subsections 1 and 3 of section 4-41-02 of the North Dakota Century Code are amended and reenacted as follows:

1. Any person desiring to grow or process industrial hemp for commercial purposes shall apply to the agriculture commissioner for a license on a form prescribed by the commissioner. The application for a license must include the name and address of the applicant and the legal description of the land area to be used to produce or process industrial hemp. Except for employees of the state seed department, the agricultural experiment station, or the North Dakota state university extension service involved in research and extension related activities, the commissioner shall require each applicant for initial licensure to submit to a statewide and nationwide criminal history check. The nationwide criminal history check must be conducted in the manner provided in section 12-60-24. All costs associated with the background check are the responsibility of the applicant. Criminal history records provided to the commissioner under this section are confidential. The commissioner may use the records only in determining an applicant's eligibility for licensure. Any person with a prior criminal conviction is not eligible for licensure. If the applicant has completed the application process to the satisfaction of the commissioner, the commissioner shall issue the license, which is valid for a period of one year. Any person licensed under this section is presumed to be growing or processing industrial hemp for commercial purposes.
3. The commissioner shall adopt rules to allow the industrial hemp to be tested during growth for tetrahydrocannabinol levels and to allow for supervision of the industrial hemp during its ~~growth and harvest~~ growing, harvesting, and processing. To provide sufficient funds to pay costs associated with monitoring and testing industrial hemp in the state, the commissioner shall assess each applicant a fee of five dollars per acre. The minimum fee assessed must be one hundred fifty dollars per applicant. Collections from this fee must be deposited in the ~~attorney general's~~ commissioner's operating fund and are ~~hereby~~

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<sup>26</sup> Section 4-41-02 was also amended by section 7 of House Bill No. 1020, chapter 20.



appropriated to the ~~attorney general~~ commissioner to be used to enforce this chapter.

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

Approved March 5, 2007  
Filed March 6, 2007

**CHAPTER 70****HOUSE BILL NO. 1490**

(Representatives Monson, S. Meyer, Nelson)  
(Senators Klein, Wanzek)

**INDUSTRIAL HEMP IMPORTATION AND SALE**

AN ACT to create and enact a new section to chapter 4-41 of the North Dakota Century Code, relating to the sale of industrial hemp seed; to amend and reenact subdivision b of subsection 2 of section 12-60-24 of the North Dakota Century Code, relating to criminal history record checks; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 4-41 of the North Dakota Century Code is created and enacted as follows:

**Industrial hemp seed - Authority to import and sell.** North Dakota state university and any other person licensed under this chapter may import and resell industrial hemp seed that has been certified as having no more than three-tenths of one percent tetrahydrocannabinol.

<sup>27</sup> **SECTION 2. AMENDMENT.** Subdivision b of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- b. The agriculture commissioner for each applicant for a license to grow or process industrial hemp under section 4-41-02.

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

Approved March 5, 2007  
Filed March 6, 2007

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<sup>27</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1313, chapter 374, section 1 of House Bill No. 1455, chapter 367, section 1 of Senate Bill No. 2037, chapter 491, section 3 of Senate Bill No. 2260, chapter 115, and section 4 of Senate Bill No. 2260, chapter 115.

# ALCOHOLIC BEVERAGES

## CHAPTER 71

### SENATE BILL NO. 2135

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

## ALCOHOLIC BEVERAGE TAXATION

AN ACT to create and enact two new subsections to section 5-01-01 of the North Dakota Century Code, relating to definitions of bottle or can and in bulk for alcoholic beverage purposes; and to amend and reenact subsection 14 of section 5-01-01, sections 5-01-04, 5-01-08, and 5-01-16, subsections 2, 3, 4, and 5 of section 5-01-17, and sections 5-03-01, 5-03-07, and 5-03-09 of the North Dakota Century Code, relating to the definition of twenty-one years of age for alcoholic beverage purposes, manufacture of alcoholic beverages, use of alcoholic beverages, direct sales from out-of-state sellers, sales and tax reporting by domestic wineries, qualifications for a state wholesale license, imposition of tax on sales by domestic wineries, microbrew pubs, and direct shippers, and requirements for alcoholic beverage supplier's licenseholders.

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

<sup>28</sup> **SECTION 1.** Two new subsections to section 5-01-01 of the North Dakota Century Code are created and enacted as follows:

"Bottle or can" means any container, regardless of the material from which made, having a capacity less than a bulk container for use for the sale of malt beverages at retail.

"In bulk" means in containers having a capacity not less than one-sixth barrel for use for the sale of malt beverages at retail.

<sup>29</sup> **SECTION 2. AMENDMENT.** Subsection 14 of section 5-01-01 of the North Dakota Century Code is amended and reenacted as follows:

14. "Twenty-one years of age" means it is after ~~three~~ eight a.m. on the date twenty-one years after a person's date of birth.

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<sup>28</sup> Section 5-01-01 was also amended by section 2 of Senate Bill No. 2135, chapter 71.

<sup>29</sup> Section 5-01-01 was also amended by section 1 of Senate Bill No. 2135, chapter 71.

**SECTION 3. AMENDMENT.** Section 5-01-04 of the North Dakota Century Code is amended and reenacted as follows:

**5-01-04. Manufacture of alcoholic beverages prohibited - Exceptions.** A person may manufacture ~~malt~~ alcoholic beverages and ~~wine~~ for personal or family use, and not for sale, without securing a license if the amount manufactured is within quantities allowed by the bureau of alcohol, tobacco, firearms and explosives of the United States treasury department. Any person manufacturing alcoholic beverages within this state in quantities greater than those permitted by the United States treasury department is guilty of a class A misdemeanor and property used for same is subject to disposition by the court except any person may establish a brewery for the manufacture of malt beverages, a winery, or a distillery or other plant for the distilling, manufacturing, or processing of ~~liquor~~ alcohol within this state if the person has secured a license from the state tax commissioner. ~~Such~~ This license must be issued on a calendar-year basis with a fee of five hundred dollars. A first-time license fee may be reduced twenty-five percent for each full quarter of a year elapsed between the first day of the year for which the license is issued and the date on which the application for the license is filed with the state tax commissioner. A license may not be issued for any period for a fee less than one-half of the annual license fee. ~~Said~~ This license shall allow sale to only licensed wholesalers.

<sup>30</sup> **SECTION 4. AMENDMENT.** Section 5-01-08 of the North Dakota Century Code is amended and reenacted as follows:

**5-01-08. Persons under twenty-one years of age prohibited from using alcoholic beverages or entering licensed premises - Penalty.**

1. Except as permitted in this section and section 5-02-06, a person under twenty-one years of age may not manufacture or attempt to manufacture, purchase or attempt to purchase, consume or have recently consumed other than during a religious service, be under the influence of, be in possession of, or furnish money to any person for the purchase of an alcoholic beverage.
2. A person under twenty-one years of age may not enter any licensed premises where alcoholic beverages are being sold or displayed, except:
  - a. A restaurant if accompanied by a parent or legal guardian;
  - b. In accordance with section 5-02-06;
  - c. If the person is an independent contractor or the independent contractor's employee engaged in contract work and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages;
  - d. If the person is a law enforcement officer or other public official who enters the premises in the performance of official duty; or

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<sup>30</sup> Section 5-01-08 was also amended by section 1 of Senate Bill No. 2204, chapter 72, and section 1 of Senate Bill No. 2329, chapter 73.

- e. If the person enters the premises for training, education, or research purposes under the supervision of a person twenty-one or more years of age with prior notification of the local licensing authority.
3. A violation of this section is a class B misdemeanor.
4. The court, under this section, may refer the person to an outpatient addiction facility licensed by the department of human services for evaluation and appropriate counseling or treatment.
5. The offense of consumption occurs in the county of consumption or the county where the offender is arrested.
6. ~~For purposes of this section, a person is not twenty-one years of age until eight a.m. on that person's twenty-first birthday.~~

**SECTION 5. AMENDMENT.** Section 5-01-16 of the North Dakota Century Code is amended and reenacted as follows:

**5-01-16. Direct sale from out-of-state seller to consumer - Penalty.**

1. A person in the business of selling alcoholic beverages may not knowingly or intentionally ship, or cause to be shipped, any alcoholic beverage from an out-of-state location directly to a person in this state who is not a wholesaler.
2. A person in the business of transporting goods may not knowingly or intentionally transport any alcoholic beverage, from an out-of-state location of a person in the business of selling alcoholic beverages, directly to a person in this state who is not a wholesaler.
3. For a first violation of subsection 1 or 2, the state tax commissioner shall notify, by certified mail, the violator and order that person to cease and desist any shipment of alcoholic beverages in violation of subsection 1 or 2. The second violation of subsection 1 or 2 is a class A misdemeanor and a third and subsequent violation is a class C felony.
4. The alcoholic beverage transported in violation of this section and the vehicle used in violation of this section are forfeitable property under chapter 29-31.1.
5. This section does not apply to a transaction in which an individual twenty-one years of age or older who imports or transports into this state ~~2.38 gallons [9 liters] or less of liquor or 7.13 gallons [27 liters] or less of wine,~~ two hundred eighty-eight fluid ounces [8517.18 milliliters] or less of beer, or 2.38 gallons [9 liters] or less of any other alcoholic beverage per month for personal use and not for resale from a person holding a valid manufacturer's or retailer's license issued by the state of its domicile. Every package of alcoholic beverages shipped directly to an individual in this state must be labeled with conspicuous words "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY". A shipper shall obtain the signature of an individual twenty-one years of age or older before delivering any alcoholic beverages shipped directly to an individual in this state. A manufacturer or retailer selling or shipping alcoholic beverages under this subsection

shall obtain a direct shipping permit from the state tax commissioner and pay an annual fee of fifty dollars within thirty days of making the first shipment. A direct shipper shall report and pay the wholesaler and retailer taxes to the state tax commissioner on all alcoholic beverages sold to residents in this state at the rates set forth in sections 5-03-07 and ~~57-39.2-03.2~~ 57-39.6-02. A direct shipper shall file reports with the state tax commissioner showing for each shipment the quantity sold, the date shipped, and the amount of tax due the state. A direct shipper is subject to section 5-03-06. The reports are due January fifteenth of the year following the year sales and shipments were made. When the fifteenth day of January falls on a Saturday, Sunday, or legal holiday, the due date is the first working day thereafter. The report must provide such detail and be in format as prescribed by the state tax commissioner. The state tax commissioner may require that the report be submitted in an electronic format approved by the state tax commissioner. The state tax commissioner may initiate and maintain an action in a court of competent jurisdiction to enjoin a violation of this subsection and may request award of all costs and attorney's fees incurred by the state incidental to that action. Upon determination by the state tax commissioner that an illegal sale or shipment of alcoholic beverages has been made to a consumer in this state by either a manufacturer or retailer of alcoholic beverages, the state tax commissioner may notify both the bureau of alcohol, tobacco, firearms and explosives of the United States department of the treasury and the licensing authority for the state in which the manufacturer or retailer is domiciled that a state law pertaining to the regulation of alcoholic beverages has been violated and may request those agencies to take appropriate action.

6. ~~In the alternative to subsection 5 and as a means for allowing reciprocal privilege, this section does not apply to and there are not due any state taxes, fees, or other charges for a resident of this state who is at least twenty-one years of age who imports or transports into this state from another state wine for personal use if the state from which the wine is sent allows a resident of that state to receive wine from this state without imposition of state taxes, fees, or other charges. A person who receives wine under this subsection may not resell the wine. For tax purposes, receipt of a shipment into this state under this subsection is not a sale in this state. A licensed winery, wholesaler, or retailer in this state may ship wine for personal use and not for resale directly to a resident of another state if the state to which the wine is sent allows residents of this state to receive wine sent from that state without payment of additional state taxes, fees, or other charges. For tax purposes, the shipment to another state under this subsection is a sale in this state. The shipping container of any wine sent into or out of this state under this subsection must be labeled to indicate clearly that the container contains alcoholic beverages and may not be delivered to an individual who is under twenty-one years of age. A person in another state may not sell wine for shipment to a person in this state under this subsection in an amount in excess of 7.13 gallons [27 liters] of wine per month. Sales by a winery may include interstate sales and interstate sales through the internet. Annual shipping sales under this section made by a winery in this state are in addition to onpremises tasting room volume totals and are not part of the winery's annual onpremises total limitations.~~

**SECTION 6. AMENDMENT.** Subsections 2, 3, 4, and 5 of section 5-01-17 of the North Dakota Century Code are amended and reenacted as follows:

2. A domestic winery may sell, ~~on the winery premises,~~ wine produced by that winery at on sale or off sale, in retail lots, and not for resale, and may sell or direct ship its wine to persons inside or outside of the state in a manner consistent with the laws of the place of the sale or delivery in total quantities not in excess of twenty-five thousand gallons [94625 liters] in a calendar year; glassware; wine literature and accessories; and cheese, cheese spreads, and other snack food items. A licensee may dispense free samples of the wines offered for sale. Subject to local ordinance, sales at on sale and off sale may be made on Sundays between twelve noon and twelve midnight. The state tax commissioner may issue special events permits for not more than twenty days per calendar year to a domestic winery allowing the winery, subject to local ordinance, to give free samples of its wine and to sell its wine by the glass or in closed containers, at a designated trade show, convention, festival, or a similar event approved by the state tax commissioner. ~~The domestic winery may sell its wine to a liquor wholesaler licensed in this state and may sell or deliver its wine to persons outside the state pursuant to the laws of the place of the sale or delivery. A domestic winery may not engage in any wholesaling activities. All sales and delivery deliveries of wines to any other retail licensed premises in this state may be made only through a wholesale liquor license. A domestic winery may obtain a domestic winery license and a retailer license allowing the onpremises sale of alcoholic beverages at a restaurant owned by the licensee and located on property contiguous to the winery licensed North Dakota liquor wholesaler. For any month in which a domestic winery has made sales to a North Dakota wholesaler, that domestic winery shall file a report with the state tax commissioner no later than the last day of each calendar month reporting sales made during the preceding calendar month. When the last day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day thereafter.~~
3. A domestic winery ~~shall pay to the state the wholesaler taxes and the sales taxes on all wines sold at retail by the licensee as set forth in sections 5-03-07 and 57-39.2-03.2~~ may obtain a domestic winery license and a retailer license allowing the onpremises sales of alcoholic beverages at a restaurant owned by the licensee and located on property contiguous to the winery.
4. A domestic winery is subject to section 5-03-06 and shall report quarterly or and pay annually to the state tax commissioner the total quantity of wine wholesaler taxes due on all wines sold by type and the amount of taxes due to the state in the manner and on the forms prescribed by the state tax commissioner licensee at retail, including all wines shipped directly to consumers as set forth in sections 5-03-07 and 57-39.6-02. The annual wholesaler tax reports are due January fifteenth of the year following the year sales were made. When the fifteenth of January falls on a Saturday, Sunday, or legal holiday, the due date is the first working day thereafter. The report must provide such detail and be in a format as prescribed by the state tax commissioner. The state tax commissioner may require that the report be submitted in an electronic format approved by the state tax commissioner.

5. ~~Except as otherwise specified in this section, all provisions of this title govern the production, sale, possession, and consumption of wine produced by a domestic winery.~~

**SECTION 7. AMENDMENT.** Section 5-03-01 of the North Dakota Century Code is amended and reenacted as follows:

**5-03-01. State wholesale license required - Qualifications - Penalty -**

**Exception.** Before any person engages in the sale at wholesale of beer or liquor in this state, that person shall first procure a license from only the state tax commissioner. ~~A lender who acquires an inventory of beer or liquor by reason of foreclosure of a security interest in the inventory is exempt from obtaining a license before the sale of the inventory. The lender shall offer the inventory for sale first to the wholesaler. A lender who forecloses upon a security interest in beer inventory for which the lender has a security interest shall dispose of the beer inventory within ninety days of obtaining possession of the inventory.~~ The license must only allow sale to licensed retailers, licensed wholesalers, regular retail outlets on federal military reservations, and sale for export from a federally bonded warehouse, or a foreign trade zone, to an export bonded warehouse. No license may be issued unless the applicant files a sworn application, accompanied by the required fee, showing the following qualifications:

1. If the applicant is not a corporation, the applicant must be a citizen of the United States and a resident of this state and a person of good moral character. If the applicant is a corporation, the manager of the licensed premises must be a resident of this state, 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 tax commissioner may require the applicant to set forth other information necessary to enable the state tax commissioner to determine if a license should be granted.
3. A person is not eligible for such a license unless that person has a warehouse and office in this state, in which is kept a complete set of records relative to that person's alcoholic beverage transactions in this state.
4. The applicant may not have any financial interest in any retail alcoholic beverage business.
5. The provisions of this section relating to warehousing do not apply to a wholesaler of beer located in an adjoining state that permits wholesalers licensed in North Dakota to deliver beer to retailers without warehousing in that state.

A lender who acquires an inventory of beer or liquor by reason of a foreclosure of a security interest in the inventory is exempt from the requirement to obtain a license before the sale of the inventory. The lender shall offer the inventory for sale first to the wholesaler. A lender who forecloses upon a security interest in beer inventory for which the lender has a security interest shall dispose of the beer inventory within ninety days of obtaining possession of the inventory. Any person distributing alcoholic beverages in this state without compliance with this title is guilty of a class B misdemeanor.



**SECTION 8. AMENDMENT.** Section 5-03-07 of the North Dakota Century Code is amended and reenacted as follows:

**5-03-07. Imposition of tax - Rate.** A tax is hereby imposed upon all alcoholic beverage wholesalers, domestic wineries, microbrew pubs, and direct shippers for the privilege of doing business in this state. The amount of ~~such~~ this tax shall be determined by the gallonage ~~sold by wholesalers~~ according to the following schedule:

Beer in bulk containers - per wine gallon	\$ .08 (.021 per liter)
Beer in bottles and cans - per wine gallon	.16 (.042 per liter)
Wine containing less than 17% alcohol by volume - per wine gallon	.50 (.132 per liter)
Wine containing 17%-24% alcohol by volume - per wine gallon	.60 (.159 per liter)
Sparkling wine - per wine gallon	1.00 (.264 per liter)
Distilled spirits - per wine gallon	2.50 (.66 per liter)
Alcohol - per wine gallon	4.05 (1.07 per liter)

**SECTION 9. AMENDMENT.** Section 5-03-09 of the North Dakota Century Code is amended and reenacted as follows:

**5-03-09. Supplier license required - Filing requirements - Penalty.**

1. Before a supplier may engage in the sale or shipment of alcoholic beverages to a licensed North Dakota wholesaler, that supplier must first procure a supplier license from the state tax commissioner.
2. For any month in which a licensed supplier has made sales to a North Dakota wholesaler, that supplier shall file a report with the state tax commissioner no later than the ~~thirtieth~~ last day of each calendar month covering alcoholic beverages sold or shipped to a North Dakota wholesaler during the preceding calendar month. When the ~~thirtieth~~ last day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day ~~after the Saturday, Sunday, or legal holiday thereafter~~. The report must provide such detail and be in a format as prescribed by the state tax commissioner. The state tax commissioner may require that the report be submitted in an electronic format approved by the state tax commissioner.
3. If a supplier fails to file the required report as required by this section, there is imposed a penalty of twenty-five dollars per month for each calendar month or fraction of a month during which the delinquency continues beginning with the month during which the report was due.
4. A supplier in violation of this section or who furnishes information required by this section that is false or misleading is guilty of a class A misdemeanor.

5. In addition, whenever the holder of a supplier's license fails to comply with any of the provisions of this title or any rules or regulations prescribed by the state tax commissioner and adopted under this title, the state tax commissioner, upon hearing after giving ten days' notice of the time and place of the hearing to show cause why the holder's license should not be revoked, may revoke the license. The state tax commissioner also shall have the power to restore licenses after such revocation. Whenever the holder of a license has had the license revoked for failure to comply with the provisions of this title or any rules and regulations prescribed by the state tax commissioner and adopted under this title, the state tax commissioner shall charge a fee of one hundred dollars for the reissuance of the license.

Approved April 5, 2007

Filed April 5, 2007

**CHAPTER 72****SENATE BILL NO. 2204**

(Senators Hacker, Holmberg, Lyson)  
(Representatives Dahl, Delmore, N. Johnson)

**MINOR ALCOHOL OFFENSE IMMUNITY**

AN ACT to amend and reenact sections 5-01-08, 5-01-09, 5-02-06, and 14-10-06 of the North Dakota Century Code, relating to immunity from criminal liability for consumption of alcoholic beverages by an individual under twenty-one years of age and mitigating factors for other individuals.

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

<sup>31</sup> **SECTION 1. AMENDMENT.** Section 5-01-08 of the North Dakota Century Code is amended and reenacted as follows:

**5-01-08. ~~Persons~~ Individuals under twenty-one years of age prohibited from using alcoholic beverages or entering licensed premises - Penalty.**

1. Except as permitted in this section and section 5-02-06, a ~~person~~ an individual under twenty-one years of age may not manufacture or attempt to manufacture, purchase or attempt to purchase, consume or have recently consumed other than during a religious service, be under the influence of, be in possession of, or furnish money to any ~~person~~ individual for the purchase of an alcoholic beverage.
2. A ~~person~~ An individual under twenty-one years of age may not enter any licensed premises where alcoholic beverages are being sold or displayed, except:
  - a. A restaurant if accompanied by a parent or legal guardian;
  - b. In accordance with section 5-02-06;
  - c. If the ~~person~~ individual is an independent contractor or the independent contractor's employee engaged in contract work and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages;
  - d. If the ~~person~~ individual is a law enforcement officer or other public official who enters the premises in the performance of official duty; or
  - e. If the ~~person~~ individual enters the premises for training, education, or research purposes under the supervision of a ~~person~~ an

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<sup>31</sup> Section 5-01-08 was also amended by section 4 of Senate Bill No. 2135, chapter 71, and section 1 of Senate Bill No. 2329, chapter 73.

individual twenty-one or more years of age with prior notification of the local licensing authority.

3. A violation of this section is a class B misdemeanor.
4. The court, under this section, may refer the ~~person~~ individual to an outpatient addiction facility licensed by the department of human services for evaluation and appropriate counseling or treatment.
5. The offense of consumption occurs in the county of consumption or the county where the offender is arrested.
6. For purposes of this section, a ~~person~~ an individual is not twenty-one years of age until eight a.m. on that ~~person's~~ individual's twenty-first birthday.
7. An individual under twenty-one years of age is immune from criminal prosecution under this section if that individual contacted law enforcement or emergency medical services and reported that another individual under twenty-one years of age was in need of medical assistance due to alcohol consumption, provided assistance to the individual in need of medical assistance until assistance arrived and remained on the scene, or was the individual in need of medical assistance and cooperated with medical assistance and law enforcement personnel on the scene. The maximum number of individuals that may be immune for any one occurrence is five individuals.

**SECTION 2. AMENDMENT.** Section 5-01-09 of the North Dakota Century Code is amended and reenacted as follows:

**5-01-09. Delivery to certain persons unlawful.**

1. Any ~~person~~ individual knowingly delivering alcoholic beverages to a ~~person~~ an individual under twenty-one years of age, except as allowed under section 5-02-06, or to a habitual drunkard, an incompetent, or an obviously intoxicated ~~person~~ individual is guilty of a class A misdemeanor, subject to sections 5-01-08, 5-01-08.1, and 5-01-08.2.
2. An individual under twenty-one years of age is immune from criminal prosecution under this section if that individual contacted law enforcement or emergency medical services and reported that another individual under twenty-one years of age was in need of medical assistance due to alcohol consumption, provided assistance to the individual in need of medical assistance until assistance arrived and remained on the scene and cooperated with medical assistance and law enforcement personnel on the scene, or was the individual in need of medical assistance. The maximum number of individuals that may be immune for any one occurrence is five individuals.
3. If an individual is convicted of this section for delivering alcoholic beverages to an individual under twenty-one years of age, the court shall consider the following in mitigation:
  - a. After consuming the alcohol, the underage individual was in need of medical assistance as a result of consuming alcohol; and

- b. Within twelve hours after the underage individual consumed the alcohol, the defendant contacted law enforcement or emergency medical personnel to report that the underage individual was in need of medical assistance as a result of consuming alcohol.

**SECTION 3. AMENDMENT.** Section 5-02-06 of the North Dakota Century Code is amended and reenacted as follows:

**5-02-06. Prohibitions for ~~persons~~ individuals under twenty-one years of age - Penalty - Exceptions.**

1. Except as permitted in this section, a licensee who dispenses alcoholic beverages to a ~~person~~ an individual under twenty-one years of age, or who permits a ~~person~~ an individual under twenty-one years of age to remain on the licensed premises while alcoholic beverages are being sold or displayed, is guilty of a class A misdemeanor, subject to sections 5-01-08, 5-01-08.1, and 5-01-08.2.
2. A ~~person~~ An individual under twenty-one years of age may not remain in a restaurant where alcoholic beverages are being sold except if the restaurant is separated from the room in which alcoholic beverages are opened or mixed and gross sales of food are at least equal to gross sales of alcoholic beverages which are consumed in the dining area, or if the ~~person~~ individual is employed by the restaurant as a food waiter, food waitress, busboy, or busgirl under the direct supervision of a ~~person~~ an individual twenty-one or more years of age and is not engaged in the sale, dispensing, delivery, or consumption of alcoholic beverages.
3. A ~~person~~ An individual under twenty-one years of age may enter and remain on the licensed premises if the ~~person~~ individual is an independent contractor or the independent contractor's employee engaged in contract work and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages; if the ~~person~~ individual is a law enforcement officer or other public official who enters the premises in the performance of official duty; or if the ~~person~~ individual enters the licensed premises for training, education, or research purposes under the supervision of a ~~person~~ an individual twenty-one or more years of age with prior notification of the local licensing authority.
4. A ~~person~~ An individual under twenty-one years of age may remain in an area of a site where beer, wine, or sparkling wine is sold in accordance with the conditions of an event permit issued pursuant to section 5-02-01.1.
5. A ~~person~~ An individual who is nineteen years of age or older but under twenty-one years of age may be employed by a restaurant as provided in subsection 2 to serve and collect money for alcoholic beverages, if the ~~person~~ individual is under the direct supervision of a ~~person~~ an individual twenty-one or more years of age, but may not be engaged in mixing, dispensing, or consuming alcoholic beverages. Any establishment where alcoholic beverages are sold may employ ~~persons~~ individuals from eighteen to twenty-one years of age to work in the capacity of musicians under the direct supervision of a ~~person~~ an individual twenty-one or more years of age.

6. For purposes of this section, a ~~person~~ an individual is not twenty-one years of age until eight a.m. on that ~~person's~~ individual's twenty-first birthday.
7. If an individual is convicted of this section, the court shall consider the following in mitigation:
  - a. After consuming the alcohol, the underage individual was in need of medical assistance as a result of consuming alcohol; and
  - b. Within twelve hours after the underage individual consumed the alcohol, the defendant contacted law enforcement or emergency medical personnel to report that the underage individual was in need of medical assistance as a result of consuming alcohol.

**SECTION 4. AMENDMENT.** Section 14-10-06 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Any ~~person~~ individual 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~~ individual 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 12.1-27.2-01, in any play, motion picture, photograph, dance, or other visual representation is guilty of a class C felony.
3. If an individual is convicted of this section for encouraging, causing, or contributing to the consumption or possession of alcoholic beverages by an individual under twenty-one years of age, the court shall consider the following in mitigation:
  - a. After consuming the alcohol, the underage individual was in need of medical assistance as a result of consuming alcohol; and
  - b. Within twelve hours after the underage individual consumed the alcohol, the defendant contacted law enforcement or emergency medical personnel to report that the underage individual was in need of medical assistance as a result of consuming alcohol.

Approved April 13, 2007  
Filed April 16, 2007

**CHAPTER 73****SENATE BILL NO. 2329**  
(Senators Heckaman, Cook, Dever)  
(Representatives Koppelman, S. Meyer)**ALCOHOL OFFENSE BY MINOR SENTENCE**

AN ACT to amend and reenact subsection 3 of section 5-01-08 of the North Dakota Century Code, relating to the sentence for the person under twenty-one years of age using alcoholic beverages.

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

<sup>32</sup> **SECTION 1. AMENDMENT.** Subsection 3 of section 5-01-08 of the North Dakota Century Code is amended and reenacted as follows:

3. A violation of this section is a class B misdemeanor. For a violation of subsection 2, the court also shall sentence a violator to alcohol and drug education.

Approved May 2, 2007  
Filed May 3, 2007

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<sup>32</sup> Section 5-01-08 was also amended by section 4 of Senate Bill No. 2135, chapter 71, and section 1 of Senate Bill No. 2204, chapter 72.

**CHAPTER 74****HOUSE BILL NO. 1082**

(Representative DeKrey)

**ALCOHOL WITHOUT LIQUID DEVICES PROHIBITED**

AN ACT to create and enact a new section to chapter 5-01 of the North Dakota Century Code, relating to alcohol without liquid devices; and to provide a penalty.

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

**SECTION 1.** A new section to chapter 5-01 of the North Dakota Century Code is created and enacted as follows:

**Alcohol without liquid devices prohibited - Definition - Penalty.**

1. A person may not sell, offer to sell, purchase, possess, use, or if that person is a retail alcoholic beverage licensee, have on the premises an alcohol without liquid device. In this section, an "alcohol without liquid device" means an apparatus that is advertised, designed, or used to vaporize an alcoholic beverage to produce a vapor that may be inhaled by an individual. The term does not include an inhaler, nebulizer, atomizer, or other device that is designed and intended specifically for medical purposes to dispense prescribed or over-the-counter medications or water.
2. This section does not apply to a hospital that operates primarily for the purpose of conducting scientific research, a state institution conducting bona fide research, a private college or university conducting bona fide research, or a pharmaceutical company or biotechnology company conducting bona fide research.
3. A violation of this section is a class B misdemeanor.

Approved March 23, 2007

Filed March 23, 2007



**CHAPTER 75****SENATE BILL NO. 2098**  
(Political Subdivisions Committee)  
(At the request of the Attorney General)**ALCOHOL DISPENSING AND DRUG USE SURVEY**

AN ACT to amend and reenact sections 5-02-05, 5-02-05.1, and 19-03.1-44 of the North Dakota Century Code, relating to dispensing of alcoholic beverages, Sunday alcoholic beverage permits, and drug usage reporting requirements; and to repeal sections 54-12-19 and 54-12-20 of the North Dakota Century Code, relating to the block house program.

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

**SECTION 1. AMENDMENT.** Section 5-02-05 of the North Dakota Century Code is amended and reenacted as follows:

**5-02-05. Dispensing prohibited on certain days - Penalty.** A person may not dispense or permit the consumption of alcoholic beverages on a licensed premises between two a.m. and twelve noon on Sundays, between the hours of two a.m. and eight a.m. on all other days of the week, or on Christmas Day or after six p.m. on Christmas Eve. In addition, a person may not provide off sale after ~~one~~ two a.m. on Thanksgiving Day. A person that violates this section is guilty of a class A misdemeanor.

**SECTION 2. AMENDMENT.** Section 5-02-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**5-02-05.1. Sunday alcoholic beverage permit - Penalty.**

1. Any local governing body may issue a Sunday alcoholic beverage permit to a qualified alcoholic beverage licensee licensed under this chapter or to a publicly owned or operated facility. For purposes of this section, "qualified alcoholic beverage licensee" has the same meaning as in section 5-02-01.1. A county may not issue a permit under this section to a retail alcoholic beverage establishment located within the geographical boundaries of a city.
2. The authority for issuing the permit rests solely with the local governing body. A permit may be granted only upon proper application to and approval by the governing body and must include payment of a fee determined by the governing body. A permit granted by the local governing body may be effective for more than one Sunday.
3. Under the permit, alcoholic beverages may be distributed and dancing may be permitted in the establishment or facility. A local governing body may permit dancing and the distribution of alcoholic beverages between the hours of twelve noon on Sunday and ~~one~~ two a.m. on Monday. The general public may be permitted to participate in the consumption of alcoholic beverages distributed under the authority of the permit. The establishment or facility granted the permit shall enforce the requirements of this section.

4. Any person who dispenses, sells, or permits the consumption of alcoholic beverages in violation of this section, or who furnishes information required by this section which is false or misleading, is guilty of a class A misdemeanor.

**SECTION 3. AMENDMENT.** Section 19-03.1-44 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.1-44. Comprehensive status and trends report.** On or before July first of each even-numbered year, the attorney general, or designee of the attorney general, shall report the current status and trends of unlawful drug use and abuse and drug control and enforcement efforts in this state. This report must be made to an interim legislative committee and must include the following information:

1. The ~~state department of health~~ superintendent of public instruction shall provide the results of the most recent survey of the state's young people regarding drug usage. This survey must include information regarding the accessibility of gateway and other illicit drugs, the prevalence of gateway and other illicit drugs in schools or on school property, and the types and frequency of gateway and other illicit drugs used by young people.
2. The state crime laboratory shall provide a report that includes the type of each controlled substance tested and the number of times tests were run for each controlled substance.
3. The department of human services shall provide a current status of the number of people who were treated in the state. The report must include information about the variety of drugs, legal and illegal, for which people were treated.
4. The department of corrections and rehabilitation shall provide the current status of the number of people incarcerated or on probation in the state correctional system for violation of title 19. This report must specify the average length of sentence including probation, average length of incarceration ordered by a court to be served, and average actual time incarcerated for drug offenders sentenced to the custody of the department. The report also must identify the number of people referred to treatment and treated as a condition of sentencing, probation, or parole.
5. The attorney general shall provide the current status of the number of arrests for violation of title 19 and the current enforcement efforts to combat unlawful drug trafficking and usage.

**SECTION 4. REPEAL.** Sections 54-12-19 and 54-12-20 of the North Dakota Century Code are repealed.

Approved March 5, 2007

Filed March 6, 2007

**CHAPTER 76****HOUSE BILL NO. 1346**

(Representatives Weiler, Grande, Thoreson)  
(Senators Holmberg, Nelson)

**WINE REMOVAL FROM RESTAURANT**

AN ACT to create and enact a new section to chapter 5-02 of the North Dakota Century Code, relating to the sale of wine with a meal.

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

**SECTION 1.** A new section to chapter 5-02 of the North Dakota Century Code is created and enacted as follows:

**Removal of wine from restaurant.** If a full bottle of wine has been opened and the contents partially consumed, a retail alcoholic beverage licensee whose gross sales of food are at least thirty percent of the gross sales of alcoholic beverages that are consumed on the premises may permit an individual purchasing the bottle in conjunction with the purchase of a meal to remove the bottle on leaving the licensed premises if the licensee recorks the bottle, seals the bottle with a seal that must be made conspicuously inoperative to reopen the bottle, and places a receipt of sale with the bottle. The removal of the bottle under these conditions is not an off sale of wine and is permitted without an additional license.

Approved March 21, 2007  
Filed March 21, 2007

# BANKS AND BANKING

## CHAPTER 77

### SENATE BILL NO. 2176

(Senator Klein)

(Representative N. Johnson)

## FINANCIAL INSTITUTION REGULATION

AN ACT to create and enact section 6-03-02.3 of the North Dakota Century Code, relating to parity of state and national bank powers; to amend and reenact sections 6-01-01 and 6-03-38 and subsection 11 of section 6-06-06 of the North Dakota Century Code, relating to the exclusivity of state regulation of financial institutions and credit unions and the uses of bank assets; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 6-01-01 of the North Dakota Century Code is amended and reenacted as follows:

**6-01-01. Management and control - State department of financial institutions - Local ordinances preempted.** The state department of financial institutions is under the supervision of the state banking board, state credit union board, and a chief officer designated as the commissioner of financial institutions, and known as the state examiner. ~~Whenever the term state examiner is used in this code, it means the commissioner of financial institutions.~~ The state department of financial institutions has charge of the execution of all laws relating to state banks, trust companies, credit unions, building and loan associations, mutual investment corporations, mutual savings corporations, banking institutions, and other financial corporations, exclusive of the Bank of North Dakota. A local governing body may not adopt or enforce a resolution or an ordinance regulating a financial institution or credit union.

**SECTION 2.** Section 6-03-02.3 of the North Dakota Century Code is created and enacted as follows:

**6-03-02.3. Parity for state and national banks.** Subject to authorization by the state banking board, acting by order or rule, a state bank has the same powers as a national bank and may engage directly or indirectly in any activity in which a bank could engage if the state bank were nationally chartered.

**SECTION 3. AMENDMENT.** Section 6-03-38 of the North Dakota Century Code is amended and reenacted as follows:

**6-03-38. Assets not to be used in other business - Exceptions - Penalty.** ~~No~~ Except as otherwise authorized under this title, a bank, except as otherwise authorized in this title, may not employ its money or other assets as principal, directly or indirectly, in trade or commerce, nor may it a bank employ or invest any of its assets or funds in the stock of any corporation, limited liability company, bank, partnership, firm, or association. However, a state bank may, to the extent that

~~banks a bank~~ subject to the laws of the federal government ~~are~~ is permitted to do so, a state bank may purchase shares of stocks, or any other type of securities offered by small business investment companies organized and licensed under Public Law No. 85-699, known as the Small Business Investment Company Act of 1958 [72 Stat. 689; 15 U.S.C. 661 et seq.], and the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.], and any amendments thereto, or chapter 10-30, but in no event may any state bank hold securities of small business investment companies in an amount determined by the state banking board, but in no event more than ten percent of the bank's capital and surplus. ~~Further, no~~ A bank may not invest ~~its~~ the bank's assets or funds in speculative margins of stock, bonds, grain, provisions, produce, or other commodities, except that it is lawful for a bank to make advances for grain or other products in store or in transit to market. A bank may invest in subsidiary organizations, when the activities of such organizations are incidental or complementary to the bank's activities, with the specific approval of the state banking board for each such subsidiary. The state banking board has the same power to make rules for the subsidiary organizations, and to examine ~~its~~ the organizations' records and affairs, as it has for other financial corporations under section 6-01-04. If the state banking board determines that such investments would be detrimental to the interests of a bank's depositors, ~~it~~ the state banking board may direct the bank to divest itself of such subsidiary investments. ~~In addition, the state banking board has power to authorize state banks to engage directly or indirectly in any 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 invests or uses ~~its~~ the bank's funds contrary to this title is guilty of a class A misdemeanor.

**SECTION 4. AMENDMENT.** Subsection 11 of section 6-06-06 of the North Dakota Century Code is amended and reenacted as follows:

11. ~~Credit unions~~ Subject to authorization by the state credit union board, acting by order or rule, a state credit union has the same powers as a federal credit union and may engage in any activity in which they a credit union could engage if they the credit union were federally chartered; subject to rules that the state credit union board shall adopt.

Approved April 9, 2007

Filed April 10, 2007

**CHAPTER 78****SENATE BILL NO. 2295**

(Senators Klein, Nelson)  
(Representatives Boe, Delzer, Wrangham)

**CREDIT UNION CONVERSION TO BUILDING AND  
LOAN ASSOCIATION**

AN ACT to amend and reenact subsection 1 of section 6-01-01.1 and sections 6-03-02.2, 6-06-06.1, 6-06-35, and 6-09-36 of the North Dakota Century Code, relating to conversion of a state credit union to a building and loan association and repealed building and loan association law references; to repeal title 7 of the North Dakota Century Code, relating to building and loan associations; to provide for a department of financial institutions study and report to the legislative council; to provide a penalty; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 6-01-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. There is hereby created a special fund designated as the financial institutions regulatory fund. The amounts received under the following chapters, and any other moneys received by the department of financial institutions, must be deposited into this fund: chapters 6-01, 6-03, 6-05, 6-06, 6-10, ~~7-05~~, 13-03.1, 13-04.1, 13-05, 13-08, and 13-09.

**SECTION 2. AMENDMENT.** Section 6-03-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**6-03-02.2. Issuance of certificates of deposit - Penalty.** Certificates of deposit, as defined in section 41-03-04, may only be issued in this state by financial institutions authorized to issue certificates of deposit and chartered to do business in this state under this chapter or as authorized under ~~sections section~~ section 6-06-06.1 and ~~7-02-08.4~~. Any person violating this section is subject to a civil penalty not to exceed five thousand dollars.

**SECTION 3. AMENDMENT.** Section 6-06-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**6-06-06.1. Issuance of certificates of deposit - Penalty.** Certificates of deposit, as defined in section 41-03-04, may only be issued in this state by credit unions authorized to issue certificates of deposit, and which are organized to do business in this state under this chapter or under the Federal Credit Union Act, and whose accounts are insured by the national credit union administration, except that the requirement for insurance of accounts for any "corporate central credit union" or "central credit union" may be waived under section 6-06-40, or as authorized under ~~sections section~~ section 6-03-02.2 and ~~7-02-08.4~~. Any person violating this section is subject to a civil penalty not to exceed five thousand dollars.

**SECTION 4. AMENDMENT.** Section 6-06-35 of the North Dakota Century Code is amended and reenacted as follows:

**6-06-35. Conversion from state to federal credit union and from federal to state credit union and from state credit union to building and loan association.**

1. A state credit union may be converted into a federal credit union under the laws of the United States by complying with the following requirements:
  - a. The proposition for such conversion must first be approved, and a date set for a vote thereon by the members either at a meeting to be held on such date or by written ballot to be filed on or before such date, by a majority of the directors of the state credit union. Written notice of the proposition and of the date set for the vote must then be delivered in person to each member or mailed to each member at the address for such member appearing on the records of the credit union, not more than thirty nor less than seven days prior to such date. Approval of the proposition for conversion must be by the affirmative vote of two-thirds of the members present at the meeting.
  - b. A statement of the results of the vote, verified by the affidavits of the president or vice president and the secretary, must be filed with the state credit union board within ten days after the vote is taken.
  - c. Promptly after the vote is taken and in no event later than ninety days thereafter, if the proposition for conversion was approved by such vote, the credit union shall take such action as may be necessary under the applicable federal law to make it a federal credit union, and within ten days after receipt of the federal credit union charter there must be filed with the state credit union board a copy of the charter thus issued. Upon such filing, the credit union must cease to be a state credit union.
  - d. Upon ceasing to be a state credit union, such credit union is no longer subject to any of the provisions of the North Dakota credit union law. The successor federal credit union is vested with all of the assets and shall continue to be responsible for all of the obligations of the state credit union to the same extent as though the conversion had not taken place.
2. a. A federal credit union, organized under the laws of the United States may be converted into a state credit union by:
  - (1) Complying with all federal requirements requisite to enabling it to convert to a state credit union or to cease being a federal credit union;
  - (2) Filing with the state credit union board proof of such compliance, satisfactory to the commissioner;
  - (3) Filing with the commissioner an organization certificate and bylaws, both in triplicate, as required by section 6-06-02; and

- (4) Granting discretionary authority to the commissioner to conduct an examination prior to the conversion date.

The commissioner shall set fees for such examination at an hourly rate sufficient to cover all reasonable expenses of the department of financial institutions associated with the examination. Fees must be collected by the commissioner, transferred to the state treasurer, and deposited in the financial institutions regulatory fund.

- b. When the commissioner has been satisfied that all of such requirements and all other requirements of the North Dakota law have been complied with, the commissioner shall notify the applicants and the state credit union board of that fact, and the board shall instruct the secretary of state to issue a charter in accordance with section 6-06-02. Upon issuance of the charter, the federal credit union shall become a state credit union and ceases to be a federal credit union. The state credit union is vested with all of the assets and shall continue to be responsible for all of the obligations of the federal credit union to the same extent as though the conversion had not taken place.
3. After July 31, 2009, a state credit union may convert to a building and loan association by complying with the following requirements:
    - a. The proposal for a conversion first must be approved and a date set for a vote on the proposal by the members either at a meeting to be held on such date or by written ballot to be filed on or before such date by a majority of the directors of the credit union. Approval of the proposal for the conversion must be by the affirmative vote of two-thirds of the members voting.
    - b. A state credit union that proposes to convert to a building and loan association shall submit notice to each of the credit union's members who are eligible to vote on the matter of the credit union's intent to convert:
      - (1) Ninety days before the date of the member vote on the conversion;
      - (2) Sixty days before the date of the member vote on the conversion; and
      - (3) Thirty days before the date of the member vote on the conversion.
    - c. A state credit union that proposes to convert to a building and loan association shall submit a notice to the state credit union board of the credit union's intent to convert at least ninety days before the date of the completion of the conversion.
    - d. Upon completion of a conversion, the state credit union is no longer subject to any of the provisions of chapter 6-06.
    - e. A director or senior management official of a state credit union may not receive any economic benefit in connection with a conversion of the state credit union other than reasonable director fees and



reasonable compensation and other benefits paid to directors or senior management officials of the converted institution in the ordinary course of business. As used in this subdivision, the term senior management official means a chief executive officer, an assistant chief executive officer, a chief financial officer, and any other senior executive officer as may be defined by the state credit union board.

- f. Before January 1, 2009, the state credit union board shall adopt rules applicable to state credit union conversion to a building and loan association which are consistent with the conversion rules of the national credit union administration.
- g. The commissioner shall review the methodology by which the conversion member vote was taken and procedures applicable to the member vote. The commissioner shall report the commissioner's findings to the state credit union board. If the commissioner or the state credit union board disapproves of the methods by which the conversion member vote was taken or procedures applicable to the member vote, the member vote must be retaken as directed by the commissioner or the state credit union board.

**SECTION 5. AMENDMENT.** Section 6-09-36 of the North Dakota Century Code is amended and reenacted as follows:

**6-09-36. Bank of North Dakota - Custodian of securities.** Notwithstanding any other provision of law to the contrary, the Bank of North Dakota shall replace the state treasurer as the custodian of all securities that are required to be deposited with the state except that the state treasurer is the custodian of all securities resulting from the investment of funds by the state treasurer, or except as otherwise required by this section and sections 6-05-04, 6-05-05, 6-05-27, ~~7-07-03, 7-07-04, 7-07-12,~~ 39-16-10, 39-16.1-15, subsection 1 of section 39-16.1-17, and subsection 1 of section 39-16.1-19.

**SECTION 6. REPEAL.** Title 7 of the North Dakota Century Code is repealed.

**SECTION 7. DEPARTMENT OF FINANCIAL INSTITUTIONS STUDY OF BUILDING AND LOAN ASSOCIATIONS - REPORT TO LEGISLATIVE COUNCIL.** During the 2007-08 interim, the commissioner of financial institutions shall study the state's building and loan association law and mutual savings banks law and how these laws relate to conversions of state credit unions to building and loan associations or mutual savings banks. Before July 1, 2008, the commissioner shall report to the legislative council on the outcome of the study and present any proposed legislation the department of financial institutions determines is necessary to replace North Dakota Century Code title 7.

**SECTION 8. EFFECTIVE DATE.** Sections 1, 2, 3, 5, and 6 of this Act become effective on August 1, 2009.

Approved April 12, 2007  
Filed April 13, 2007

**CHAPTER 79****SENATE BILL NO. 2192**

(Senator Nething)

**ELECTRONIC RECORDS AND SIGNATURES  
RECOGNITION**

AN ACT to create and enact five new subsections to section 6-01-02 and a new section to chapter 6-08 of the North Dakota Century Code, relating to the legal recognition of electronic records and signatures.

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

**SECTION 1.** Five new subsections to section 6-01-02 of the North Dakota Century Code are created and enacted as follows:

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Electronic communication" means any form of communication, not directly involving the physical transmission of paper that creates a record that may be retained, retrieved, and reviewed by a recipient of the communication and may be directly reproduced in paper form by the recipient through an automated process.

"Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and signed or adopted by a person with the intent to sign the record.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

**SECTION 2.** A new section to chapter 6-08 of the North Dakota Century Code is created and enacted as follows:

**Legal recognition of electronic records and electronic signatures.** A record or signature on a record or document may not be denied legal effect or enforceability solely because it is in electronic form. A contract between a financial institution and another person may not be denied legal effect or enforceability solely because an electronic record was used in its formation. If a provision requires a

record to be in writing, an electronic record satisfies the requirement. If a provision requires a signature, an electronic signature satisfies the requirement.

Approved April 26, 2007  
Filed April 27, 2007

**CHAPTER 80****HOUSE BILL NO. 1062**

(Industry, Business and Labor Committee)

(At the request of the Department of Financial Institutions)

**BANK BRANCHING, INFORMATION, AND PER DIEM**

AN ACT to amend and reenact subsection 1 of section 6-01-03, subsection 4 of section 6-01-07.1, and sections 6-01-09 and 6-08.4-03 of the North Dakota Century Code, relating to per diem of state banking board and state credit union board members, information and sharing agreements with other entities, the timeframe of examinations of financial institutions, and approval of interstate branches by state banks.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 6-01-03 of the North Dakota Century Code is amended and reenacted as follows:

1. The state banking board consists of the commissioner and six members to be appointed by the governor, four of whom must 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 must have 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 must be a laymember from the public at large. The term of office of the members of the board, other than the commissioner, is 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 must be filled by appointment by the governor for the unexpired term. The commissioner is the chairperson of the board and the attorney general is, 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~~  one hundred dollars per day while attending meetings, or in the performance of such special duties as the board may direct. Expense reimbursements for meals, lodging, and transportation must be at the same rate as those allowed state employees.

**SECTION 2. AMENDMENT.** Subsection 4 of section 6-01-07.1 of the North Dakota Century Code is amended and reenacted as follows:

4. The commissioner may furnish information and enter into sharing agreements as to matters of mutual interest to an official or examiner of the federal reserve system, federal deposit insurance corporation, federal home loan bank board, national credit union administration, office of thrift supervision, comptroller of the currency, any other federal government agency, insurance commissioner, office of the securities commissioner, regulatory trade associations, or any state bank or credit

union supervisors or supervisors of other licensed entities of other states.

**SECTION 3. AMENDMENT.** Section 6-01-09 of the North Dakota Century Code is amended and reenacted as follows:

**6-01-09. Supervision and examination by commissioner of financial institutions.** The commissioner shall exercise a constant supervision over the business affairs of all financial corporations and institutions, out-of-state branches of financial corporations and institutions, and branches of out-of-state state-chartered banks, savings and loan associations, or savings banks 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, associations, and branches under the commissioner's jurisdiction at least once each ~~thirty~~ thirty-six months to examine their affairs and ascertain their financial condition. The commissioner shall inspect and verify the assets and liabilities of the institution and branches 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 the methods conform to the law and sound banking usage and principles. The commissioner shall inquire into and report any infringement of the laws governing those corporations and institutions, and for that purpose the commissioner may examine the officers, agents, and employees of the corporations and institutions and all persons doing business therewith. The commissioner may examine, or cause to be examined, or review the books and records of any subsidiary corporation of a bank under the commissioner's supervision and may require the bank to provide information on the holding company that owns the bank. The commissioner shall report the condition of the 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 the exigencies may demand.

**SECTION 4. AMENDMENT.** Section 6-08.4-03 of the North Dakota Century Code is amended and reenacted as follows:

**6-08.4-03. Authority of state banks to establish interstate branches.** Notwithstanding section 6-08.4-02, a North Dakota state-chartered bank, with approval of the commissioner or board, may establish, acquire, retain, and operate one or more branches in a state other than this state. An application must be filed with the commissioner or board at the time an application is filed with the responsible federal regulatory authority. The North Dakota state-chartered bank must also comply with section 6-03-11 or 6-03-13.3, as applicable. The commissioner or board may approve the transaction if the commissioner or board finds that:

1. The proposed transaction will not be detrimental to the safety and soundness of the North Dakota state-chartered bank;
2. Any new officers and directors are qualified, and possess appropriate experience and financial responsibility; and
3. The proposed transaction is consistent with the convenience and needs of the communities to be served by the bank in this state and is otherwise in the public interest.

If the commissioner's decision with respect to an application is unfavorable, the applicant bank may appeal the decision to the board by filing a notice of appeal with the commissioner within twenty days after the commissioner has notified the applicant bank of the decision.

Approved March 13, 2007  
Filed March 14, 2007

## CHAPTER 81

### HOUSE BILL NO. 1369

(Representatives Clark, Boe, Dietrich, Haas)  
(Senator Krebsbach)

### FINANCIAL TERMS USE

AN ACT to amend and reenact subsection 1 of section 6-02-01 and section 6-05-02 of the North Dakota Century Code, relating to use of terms for bank, annuity, safe deposit, surety, and trust company regulation purposes; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 6-02-01 of the North Dakota Century Code is amended and reenacted as follows:

1. No person, firm, company, copartnership, or corporation, either domestic or foreign, not organized under this chapter or authorized to take on banking powers under this section, except national banking corporations, banks organized under the laws of another state, domestic or foreign bank holding companies, their affiliates, bona fide financial institution trade associations and their affiliates, and the Bank of North Dakota, may make use of or display in connection with its business, in signs, letterheads, advertising, or in any other way, such words as "bank", "banker", or "banking", or any other word or words of like import, nor may any person or concern do or perform anything in the nature of the business of a bank until and unless such business is regularly organized or authorized under this chapter. Upon written request, the commissioner may grant an exemption to this section if the commissioner finds that use of the words "bank", "banker", or "banking", or words of like import, are not reasonably likely to cause confusion or lead the public to believe that the person requesting the exemption is a bank, holding company, trade association, or affiliate authorized under this section or is conducting a business subject to the jurisdiction of the department. In granting an exemption under this section the commissioner may restrict or condition the exemption and use of the name or word or the activities of an exempt person as the commissioner considers appropriate to protect the public interest.

**SECTION 2. AMENDMENT.** Section 6-05-02 of the North Dakota Century Code is amended and reenacted as follows:

**6-05-02. Compliance with chapter required - Penalty for noncompliance.**

No person, firm, company, copartnership, or corporation, either domestic or foreign, not organized under this chapter nor subject to its provisions, except only national banking corporations, state banks authorized under this chapter, state banks or trust companies authorized to engage in trust activities under the laws of another state, their affiliates, bona fide banking institution trade associations and their affiliates, and the Bank of North Dakota, may make use of or display in connection with its business, in signs, letterheads, advertising, or in any other way, such words as "trust", "trust company", or any other word or words of like import, nor may any person or concern do or perform anything in the nature of the business of a trust

company until and unless such business is regularly organized and authorized under this chapter. If any firm or corporation organized prior to July 1, 1931, has been granted a charter permitting it to use any word, words, or title contrary to the intent of this section, and by reason of its rights under such charter, the provisions of this section may not be enforced against it during the life of such charter. However, no renewal charter may be granted to such person, firm, or corporation permitting the continuance of the use of such word, words, or title contrary to or in violation of this section. Any person, firm, or corporation which, by reason of an existing charter right under any law or statute in effect prior to July 1, 1931, may be held by the courts not to be affected by this section and which therefore refuses to comply with the provisions of this section, during the period of noncompliance, shall display, prominently and continuously in plain, legible, and clearly discernible lettering on all of its signs, stationery, circulars, and advertising, and in all of its printed or written matter the following words and language: "NOT UNDER THE SUPERVISION OF THE STATE BANKING BOARD OR THE COMMISSIONER OF FINANCIAL INSTITUTIONS", and such language must be displayed thereon as prominently as any other matter therein. Any person, firm, company, copartnership, or corporation, domestic or foreign, violating any provision of this section, shall forfeit to the state one hundred dollars for every day or part thereof during which such violation continues. In an action brought by the commissioner or any aggrieved person, the court may issue an injunction restraining such person, firm, company, copartnership, or corporation from further using such words, terms, or phrases in violation of this section or from further transacting business in such a way or manner as to lead the public to believe that its business is in whole or in part of the nature of a trust company, or that it is under the supervision of the state banking board or the commissioner. Upon written request, the commissioner may grant an exemption to this section if the commissioner finds that use of the words "trust" or "trust company", or words of like import, are not reasonably likely to cause confusion or lead the public to believe that the person requesting the exemption is a trust company, banking institution trade association, or affiliate authorized under this section or is conducting a business subject to the jurisdiction of the department. In granting an exemption under this section the commissioner may restrict or condition the exemption and use of the name or word or the activities of an exempt person as the commissioner considers appropriate to protect the public interest.

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

Approved March 23, 2007  
Filed March 23, 2007



**CHAPTER 82****HOUSE BILL NO. 1301**  
(Representatives Keiser, Vigesaa)  
(Senator Klein)**HEALTH SAVINGS ACCOUNT CUSTODIAN**

AN ACT to amend and reenact subsection 7 of section 6-03-02 of the North Dakota Century Code, relating to the power of a bank to serve as a custodian for health savings accounts and health care cost funding accounts; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subsection 7 of section 6-03-02 of the North Dakota Century Code is amended and reenacted as follows:

7. Exercise, as determined by the board by order or rule, all the incidental powers as are necessary to carry on the business of banking, including discounting and negotiating promissory notes, bills of exchange, drafts, and other evidences of debt; receiving deposits; buying and selling exchange, coin, and bullion; loaning money upon real or personal security, or both; soliciting and receiving deposit in the nature of custodial accounts funded only in savings accounts or certificates of deposit for the purpose of health savings or similar health care cost funding accounts, retirement fund contracts, or pension programs, and such custodial accounts are exempt from chapter 6-05; and providing services to its customers involving electronic transfer of funds to the same extent that other financial institutions chartered and regulated by an agency of the federal government are permitted to provide those services within this state. A bank that provides electronic funds transfer equipment and service to its customers, at premises separate from its main banking house or duly authorized facility approved by the state banking board, must make the equipment and service available for use by customers of any other bank upon the request of the other bank to share its use and the agreement of the other bank to share pro rata all costs incurred in connection with its installation and operation, and the electronic operations are not deemed to be the establishment of a branch, nor of a separate facility. The electronic operations at premises separate from its banking house or duly authorized facility must be considered a customer electronic funds transfer center and may be established subject to rules that the state banking board adopts.

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

Approved March 6, 2007  
Filed March 7, 2007

**CHAPTER 83****SENATE BILL NO. 2182**

(Senators Nelson, Hacker, Heitkamp)  
(Representatives Delmore, Dosch, Ruby)

**BANK OPERATIONS DURING EPIDEMIC OR  
EMERGENCY**

AN ACT to create and enact a new section to chapter 6-03 of the North Dakota Century Code, relating to bank operations in the case of an epidemic or other emergency.

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

**SECTION 1.** A new section to chapter 6-03 of the North Dakota Century Code is created and enacted as follows:

**Operations during epidemic or emergency - Notice to commissioner.** A bank that operates physical facilities in any area that is experiencing an epidemic or other emergency may adjust the bank's operations in any manner that is reasonable to protect the bank's customers, employees, assets, or business. Under this section a bank may temporarily close or relocate offices, employees, or operations; restrict access to offices or services; and change the manner in which the bank provides banking services. A bank shall notify the commissioner of any actions the bank takes under the authority of this section. The bank shall give the commissioner notice promptly and in any case within three business days of the bank's decision to adjust the bank's operations. The notice must describe the bank's actions and the expected duration of the bank's adjusted operations. Unless extended by the commissioner, a bank's authority to change the bank's operations under this section may not exceed sixty days.

Approved April 12, 2007  
Filed April 13, 2007

**CHAPTER 84****HOUSE BILL NO. 1253**

(Representative Kretschmar)

**FINANCIAL INSTITUTION RECORD SEARCH  
PAYMENTS**

AN ACT to amend and reenact section 6-03-76 of the North Dakota Century Code, relating to payments for financial institutions records search services.

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

**SECTION 1. AMENDMENT.** Section 6-03-76 of the North Dakota Century Code is amended and reenacted as follows:

**6-03-76. Records search reimbursement.** Any ~~bank~~ financial institution authorized to do business in this state ~~shall~~ must be reimbursed as follows for all records searches done at the request of any state agency or any branch of the state government except the department of human services. Further, any federal agency or any branch of the federal government ~~shall~~ must also make such reimbursement if authorized to do so:

1. For search and processing time at the rate of ~~ten~~ thirty dollars per hour per person, computed on the basis of ~~two~~ seven dollars and fifty cents per quarter hour, limited to the total amount of personnel time spent in locating, retrieving, reproducing, packaging, and preparing for shipment documents or information requested.
2. For making copies of duplicates of required or requested documents at the rate of fifteen cents per page.
3. For making copies of photographs, films, and other materials at the actual cost incurred by the ~~bank~~ financial institution.

The ~~bank~~ ~~shall~~ financial institution must be reimbursed for all actual mailing or transportation expenses incurred in conveying the requested or required materials to the requesting agency. The reimbursement provisions of this section shall not apply to standard ~~bank~~ confirmations.

Approved March 6, 2007  
Filed March 7, 2007

**CHAPTER 85****SENATE BILL NO. 2151**

(Senators Krebsbach, Horne, J. Lee)  
(Representatives N. Johnson, Keiser, Thorpe)

**NSF AND CLOSED ACCOUNT CHECK FEES**

AN ACT to amend and reenact sections 6-08-16 and 6-08-16.2 of the North Dakota Century Code, relating to increasing fees and costs for checks issued on closed accounts and accounts with insufficient funds; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 6-08-16 of the North Dakota Century Code is amended and reenacted 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 that person, 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, or authorize an electronic funds transfer, for the payment of money upon a bank, banker, or depository, if at the time of the making, drawing, uttering, electronically authorizing, or delivery, or at the time of presentation for payment, if the presentation for payment is made within fourteen days after the original delivery thereof, there are not sufficient funds in or credit with the bank, banker, or depository to meet the check, draft, electronic funds transfer, or order in full upon its authorized presentation. Violation of this subsection is:
  - a. An infraction if the amount of insufficient funds or credit is not more than fifty dollars;
  - b. A class B misdemeanor if the amount of insufficient funds or credit is more than fifty dollars but not more than two hundred fifty dollars, or if the individual has pled guilty or been found guilty of a violation of this section within three years of issuing an insufficient funds check, draft, or order;
  - c. A class A misdemeanor if the amount of insufficient funds or credit is more than two hundred fifty dollars but not more than five hundred dollars, or if the individual has pled guilty or been found guilty of two violations of this section within three years of issuing an insufficient funds check, draft, or order; or
  - d. A class C felony if the amount of insufficient funds or credit is more than five hundred dollars, or an individual has pled guilty or been found guilty of three or more violations of this section within five years of willfully issuing an insufficient funds check, draft, or order.

2. The grade of an offense under this section may be determined by individual or aggregate totals of insufficient funds checks, drafts, electronic funds transfer authorizations, or orders. The person is also liable for collection fees or costs, not in excess of ~~twenty-five~~ thirty dollars, which are recoverable by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order. If the holder of the check, draft, electronic funds transfer authorization, or order or the holder's agent or representative uses the automated clearinghouse network to collect the collection fees or costs, that person shall comply with the network's rules and requirements. A collection agency shall reimburse the original holder of the check, draft, electronic funds transfer authorization, or order any additional charges assessed by the depository bank of the check, draft, electronic funds transfer authorization, or order not in excess of two dollars if recovered by the collection agency. If the person does not pay the instrument in full and any collection fees or costs not in excess of ~~twenty-five~~ thirty dollars within ten days from receipt of the notice of dishonor provided for in subsection 4, a civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order. The civil penalty consists of payment to the holder, or its agent or representative, of the instrument of the lesser of two hundred dollars or three times the amount of the instrument. The court may order an individual convicted under this section to undergo an evaluation by a licensed gaming, alcohol, or drug addiction counselor.
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, electronic funds transfer authorization, 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 may be mailed by the holder, or the holder's agent or representative, 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 notified that a check dated \_\_\_\_\_,  
 \_\_\_\_\_, 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 or agent or representative)  
 sufficient moneys to pay such instrument in full and any collection  
 fees or costs not in excess of ~~twenty-five~~ thirty dollars.

The notice of dishonor also may 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 holder, or the holder's agent or representative, mailed a notice under subsection 4. The criminal complaint for the offense of issuing a check, draft, electronic funds transfer authorization, or 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 bars the criminal charge under this section.

**SECTION 2. AMENDMENT.** Section 6-08-16.2 of the North Dakota Century Code is amended and reenacted as follows:

**6-08-16.2. Issuing check without account - Financial liability - Penalty - Exceptions.**

1. As used in this section unless the context otherwise requires:
  - 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, electronic funds transfer authorization, or order for the payment of money.
  - d. "Issues" means draws, utters, electronically authorizes, or delivers.
2. A person who, for that person or as agent or representative of another, willfully as defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if that person has been previously convicted of issuing an instrument without an account pursuant to section 6-08-16.1, and 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.
3. A person who, for that person or an agent or representative of another, willfully as defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if the instrument was for at least five hundred dollars or that person, agent, or representative of another, issues more than one instrument wherein the aggregate total of all instruments issued exceeds five hundred dollars, and 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.
4. A person who issues an instrument under subsection 2 or 3 also is liable for collection fees or costs, not in excess of ~~twenty-five~~ thirty dollars per instrument, which are recoverable by the holder of the instrument, or the holder's agent or representative. A civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the instrument. The civil penalty consists of payment to the holder of the instrument of the lesser of two hundred dollars or three times the amount of the instrument.

5. An agent acting for the receiver of an instrument issued in violation of this section may present the instrument to the state's attorney for prosecution if the holder, or the holder's agent or representative, mailed a notice under subsection 6. A criminal complaint for violating this section must be executed within ninety days after the drawer receives notice from the holder, or its agent or representative, of a no-account or closed-account instrument.
6. A notice of dishonor may be mailed by the holder, or the holder's agent or representative, of the instrument upon dishonor. Proof of mailing may be made by return receipt or by an affidavit of mailing signed by the individual making the mailing. The notice must be in substantially the following form:

Notice of Dishonored Instrument

Date \_\_\_\_\_  
Name of Issuer \_\_\_\_\_  
Street Address \_\_\_\_\_  
City and State \_\_\_\_\_  
You are according to law notified that an instrument dated \_\_\_\_\_,  
\_\_\_\_\_, 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 or agent or representative)  
sufficient moneys to pay such instrument in full and any collection  
fees or costs not in excess of ~~twenty five~~ thirty dollars.

The notice may also contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs authorized by this section.

Approved March 5, 2007  
Filed March 6, 2007

**CHAPTER 86****SENATE BILL NO. 2300**  
(Senators Klein, Dever, Robinson)  
(Representatives Boe, Kasper, Wald)**INTERSTATE BRANCHING BY BANKS**

AN ACT to amend and reenact sections 6-08.4-01 and 6-08.4-06 of the North Dakota Century Code, relating to interstate branching by banks; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 6-08.4-01 of the North Dakota Century Code is amended and reenacted as follows:

**6-08.4-01. Definitions.** For purposes of this chapter, unless the context otherwise requires:

1. "Affiliate" means a company that controls, is controlled by, or is under common control with another company.
2. "Bank" means insured bank depository institution as defined in 12 U.S.C. ~~1813(h)~~ 1813(c)(2), but the term does not include "foreign bank" as defined in 12 U.S.C. 3101(7), except any foreign bank organized under the laws of a territory of the United States, the deposits of which are insured by the federal deposit insurance corporation.
3. "Commercial activities" means activities in which a bank holding company, a financial holding company, a national bank, or a national bank financial subsidiary may not engage under federal law.
- ~~2-~~ 4. "Home state" means:
  - a. With respect to a national bank, the state in which the main office is located; and
  - b. With respect to a state bank, the state by which the bank is chartered.
- ~~3-~~ 5. "Transaction" means a bank's establishment, operation, and, as applicable, retention of a bank branch office in a state other than its home state, whether de novo, by acquisition of a separate branch office, or through a merger of a North Dakota bank with another bank.

**SECTION 2. AMENDMENT.** Section 6-08.4-06 of the North Dakota Century Code is amended and reenacted as follows:

**6-08.4-06. Powers.**

1. An out-of-state state-chartered bank that establishes, acquires, and retains one or more branches in this state under this chapter may conduct any activities at the branch or branches that are authorized



under the laws for North Dakota state banks, except to the extent those activities may be prohibited by the laws, rules, or orders of the home state applicable to the out-of-state state-chartered bank.

2. A North Dakota state-chartered bank may conduct any activities at any branch outside this state which are permissible for an out-of-state state-chartered bank where the branch is located, except to the extent those activities are expressly prohibited by North Dakota law, rule, or order.
3. A bank may not establish or maintain a branch in this state on the premises or property or within one mile [1.60 kilometers] of the premises or property of an affiliate if the affiliate engages in commercial activities.

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

Approved April 30, 2007  
Filed May 1, 2007

**CHAPTER 87****HOUSE BILL NO. 1088**

(Industry, Business and Labor Committee)  
(At the request of the Bank of North Dakota)

**BND ALTERNATIVE AND VENTURE CAPITAL  
INVESTMENTS**

AN ACT to amend and reenact subdivision c of subsection 4 of section 6-09-15 of the North Dakota Century Code, relating to defining eligible investments with the North Dakota alternative and venture capital investments; and to repeal section 6-09-40 of the North Dakota Century Code, relating to reimbursement of Bank losses for the new venture capital program.

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

<sup>33</sup> **SECTION 1. AMENDMENT.** Subdivision c of subsection 4 of section 6-09-15 of the North Dakota Century Code is amended and reenacted as follows:

- c. In North Dakota alternative and venture capital investments and early-stage capital funds, including the North Dakota development fund, incorporated, not to exceed ten million dollars, for the purpose of providing funds for investment in North Dakota alternative and venture capital investments and early-stage capital funds. The Bank may invest a maximum of two hundred thousand dollars per biennium in North Dakota-based venture capital entities that make investments in companies located outside North Dakota. The Bank may allow for third-party management of the funds invested under this subdivision if the management is provided by the North Dakota development fund, incorporated, or a third party that is located in the state and that has demonstrated fund management experience.

**SECTION 2. REPEAL.** Section 6-09-40 of the North Dakota Century Code is repealed.

Approved April 11, 2007  
Filed April 13, 2007

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<sup>33</sup> Section 6-09-15 was also amended by section 23 of House Bill No. 1014, chapter 14, section 4 of Senate Bill No. 2214, chapter 293, and section 5 of Senate Bill No. 2214, chapter 293.

**CHAPTER 88****HOUSE BILL NO. 1135**

(Industry, Business and Labor Committee)  
(At the request of the Agriculture Commissioner)

**BND UNOBLIGATED FUNDS TRANSFER**

AN ACT to create and enact a new subsection to section 6-09-15.5 of the North Dakota Century Code, relating to the transfer of unobligated Bank of North Dakota funds.

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

**SECTION 1.** A new subsection to section 6-09-15.5 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding any other provision of law, the Bank may transfer any unobligated funds to the value-added agriculture equity loan program for the purpose of interest buydown on a loan made for investment in a feedlot or dairy operation. Fund transfers under this subsection may not exceed one million dollars during a biennium.

Approved March 21, 2007  
Filed March 21, 2007

**CHAPTER 89****HOUSE BILL NO. 1091**

(Finance and Taxation Committee)  
(At the request of the Bank of North Dakota)

**HIGHER EDUCATION SAVINGS PLAN**

AN ACT to create and enact a new subdivision to subsection 1 of section 57-38-01.2, a new subdivision to subsection 2 of section 57-38-30.3, and a new subsection to section 57-38-57 of the North Dakota Century Code, relating to an individual income tax deduction for contributions to the North Dakota higher education savings plan; to amend and reenact section 6-09-38 of the North Dakota Century Code, relating to administrative fees of the North Dakota higher education savings plan and tax deductions for contributions to the plan; to provide a continuing appropriation; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 6-09-38 of the North Dakota Century Code is amended and reenacted as follows:

**6-09-38. North Dakota higher education savings plan - Administration - Rules - Continuing appropriation.** The Bank of North Dakota shall adopt rules to administer manage, promote, and market a North Dakota higher education savings plan. The Bank shall ensure that the North Dakota higher education savings plan is maintained in compliance with internal revenue service standards for qualified state tuition programs. The Bank, as trustee of the North Dakota higher education savings plan, may impose an annual administrative fee to recover expenses incurred in connection with operation of the plan or for other programs deemed to promote attendance at an institution of higher education. Administrative fees received by the Bank are appropriated on a continuing basis to be used as provided in this section. Contributions made during the taxable year to a higher education savings plan administered by the Bank, pursuant to the provisions of the plan, are eligible for an income tax deduction as provided in chapter 57-38. Information related to contributions is confidential except as is needed by the tax commissioner for determining compliance with the income tax deduction provided in chapter 57-38.

<sup>34</sup> **SECTION 2.** A new subdivision to subsection 1 of section 57-38-01.2 of the North Dakota Century Code is created and enacted as follows:

Reduced by the amount up to a maximum of five thousand dollars, or ten thousand dollars if a joint return is filed, for contributions made under a higher education savings plan administered by the Bank of North Dakota, pursuant to section 6-09-38.

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<sup>34</sup> Section 57-38-01.2 was also amended by section 43 of House Bill No. 1018, chapter 18, and section 1 of House Bill No. 1393, chapter 513.

<sup>35</sup> **SECTION 3.** A new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Reduced by the amount up to a maximum of five thousand dollars, or ten thousand dollars if a joint return is filed, for contributions made under a higher education savings plan administered by the Bank of North Dakota, pursuant to section 6-09-38.

**SECTION 4.** A new subsection to section 57-38-57 of the North Dakota Century Code is created and enacted as follows:

The tax commissioner may disclose a taxpayer's name, address, and identification number to the Bank of North Dakota for the sole purpose of administering the tax deduction for contributions to the North Dakota higher education savings plan.

**SECTION 5. EFFECTIVE DATE.** Sections 1, 2, and 3 of this Act are effective for contributions made to a higher education savings plan administered by the Bank of North Dakota after December 31, 2006, and are effective for taxable years beginning after December 31, 2006.

Approved March 30, 2007

Filed March 30, 2007

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<sup>35</sup> Section 57-38-30.3 was also amended by section 46 of House Bill No. 1018, chapter 18, section 2 of House Bill No. 1393, chapter 513, section 2 of House Bill No. 1403, chapter 519, section 1 of House Bill No. 1412, chapter 523, section 8 of Senate Bill No. 2032, chapter 520, section 1 of Senate Bill No. 2079, chapter 522, and section 2 of Senate Bill No. 2082, chapter 521.

**CHAPTER 90****SENATE BILL NO. 2104**

(Industry, Business and Labor Committee)  
(At the request of the Agriculture Commissioner)

**LIVESTOCK AND DAIRY FARMING LOAN  
GUARANTEES**

AN ACT to amend and reenact section 6-09-41 of the North Dakota Century Code, relating to loan guarantees for livestock and dairy farming and related equipment and facilities.

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

**SECTION 1. AMENDMENT.** Section 6-09-41 of the North Dakota Century Code is amended and reenacted as follows:

**6-09-41. (Effective through June 30, 2009) Livestock loan guarantee program - Establishment - Rules.**

1. The Bank of North Dakota shall establish and administer a ~~livestock~~ loan guarantee program that is designed to expand livestock feeding and dairy farming in this state.
2. Under the program, the Bank may guarantee a loan made by a bank, a credit union, a savings and loan association, or any other lending institution in this state to the owner of a commercial ~~feedlot that backgrounds or feeds cattle to harvest-ready weight~~ livestock feeding operation or to the owner of a new or expanding dairy operation. In the event of a default, the Bank shall pay to the lender the amount agreed upon, provided that the amount may not exceed eighty-five percent of the principal due the lender at the time the claim is approved.
3. The Bank shall adopt rules governing additional terms, conditions, and procedures necessary to meet the requirements of this section. ~~The rules must include an administrative fee payable to the Bank and must provide that equity requirements may not exceed fifteen percent.~~

Approved March 5, 2007  
Filed March 6, 2007

**CHAPTER 91****SENATE BILL NO. 2156**  
(Senators Klein, Heitkamp)  
(Representatives Brandenburg, Dosch)**CLEAN RENEWABLE ENERGY BONDS**

AN ACT to amend and reenact subsections 4 and 5 of section 6-09.4-03 of the North Dakota Century Code, relating to issuance of clean renewable energy bonds by the public finance authority.

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

**SECTION 1. AMENDMENT.** Subsections 4 and 5 of section 6-09.4-03 of the North Dakota Century Code are amended and reenacted as follows:

4. "Municipal security" means an evidence of indebtedness issued by a political subdivision, including a clean renewable energy bond issued under 26 U.S.C. 54 [Pub. L. 109-58; 119 Stat. 991], and a revenue agreement entered into by a contracting party as those terms are used in chapter 40-57, but does not generally include an evidence of indebtedness issued pursuant to chapter 40-57 other than an evidence of indebtedness that qualifies as a qualified small issue bond as defined under 26 U.S.C. 144(a) [Pub. L. 99-514; 100 Stat. 2606], as amended, and regulations promulgated and officially proposed to be promulgated thereunder, or as an "exempt facility bond" as defined under 26 U.S.C. 142(a)(4), (5), or (6) [Pub. L. 99-514; 100 Stat. 2606], as amended, and regulations promulgated and officially proposed to be promulgated thereunder, issued to provide one of the following:
  - a. A facility for the furnishing of water.
  - b. A wastewater facility.
  - c. A solid waste disposal facility.
5. "Political subdivision" means:
  - a. A local governmental unit created by statute or by the Constitution of North Dakota for local governmental or other public purposes.
  - b. The state department of health, or any other state agency or authority, or any member-owned association or publicly owned and nonprofit corporation:
    - (1) Operating any public water system that is subject to chapter 61-28.1.
    - (2) Operating any facility, system, or other related activity that is eligible for financial assistance under chapter 61-28.2.
  - c. The Bank of North Dakota for purposes of the revolving loan fund program established by chapter 61-28.2.

- d. The state water commission for purposes of the revolving loan fund program established by chapter 61-28.1.
- e. A qualified borrower within the meaning of 26 U.S.C. 54(j)(5) [Pub. L. 109-58; 119 Stat. 995].

Approved April 30, 2007  
Filed May 1, 2007



**CHAPTER 92****HOUSE BILL NO. 1096**

(Government and Veterans Affairs Committee)  
(At the request of the Public Finance Authority)

**PUBLIC FINANCE AUTHORITY RECORDS AND  
PROGRAM LIMITS**

AN ACT to create and enact a new section to chapter 6-09.4 of the North Dakota Century Code, relating to confidentiality of certain commercial or financial information held by the public finance authority; and to amend and reenact section 8 of chapter 90 of the 2005 Session Laws, relating to program limits for the purchase or issuance of qualified small issue bonds or municipal industrial revenue bonds by the public finance authority.

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

**SECTION 1.** A new section to chapter 6-09.4 of the North Dakota Century Code is created and enacted as follows:

**Confidentiality of certain public finance authority records.** Commercial or financial information of a contracting party provided to the public finance authority as part of any qualified small issue bonds or municipal industrial revenue bonds purchased or issued by the public finance authority, whether obtained directly or indirectly, are confidential records. Confidential records do not include routine credit inquiries; records required to be disclosed by due legal process; the name, address, and contact information of a contracting party; or the amount loaned to a contracting party.

**SECTION 2. AMENDMENT.** Section 8 of chapter 90 of the 2005 Session Laws is amended and reenacted as follows:

**SECTION 8. MUNICIPAL BOND BANK PUBLIC FINANCE AUTHORITY PROGRAM LIMITS.** Any qualified small issue bonds or municipal industrial revenue bonds purchased or issued by the ~~municipal bond bank~~ public finance authority under this Act may not exceed two million dollars per political subdivision or other contracting party, as the case may be, and twenty million dollars in total for the biennium beginning July 1, ~~2005~~ 2007, and ending June 30, ~~2007~~ 2009, except that these limits do not apply to revenue bonds issued by the ~~municipal bond bank~~ public finance authority under chapter 40-57 if the industrial commission approves a resolution under the second sentence of subsection 4 of section 6-09.4-10 making that subsection inapplicable to bonds issued under the resolution.

Approved March 7, 2007  
Filed March 8, 2007

**CHAPTER 93****HOUSE BILL NO. 1061**

(Representative Koppelman)

(At the request of the Bank of North Dakota)

**BND AGRICULTURAL LOAN GUARANTEE MAXIMUM**

AN ACT to amend and reenact section 6-09.7-09 of the North Dakota Century Code, relating to the maximum amount of Bank of North Dakota agricultural real estate loans; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 6-09.7-09 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.7-09. (~~Effective through July 31, 2007~~) Agricultural real estate loans - Guarantee.** The Bank of North Dakota may guarantee the loan of money by banks, credit unions, lending institutions that are part of the farm credit system, and savings and loan associations in this state to eligible persons for the purchase of agricultural real estate or the restructuring of agricultural real estate loans, provided the transactions do not exceed a loan-to-value ratio of eighty percent and further provided that no single loan exceed four hundred thousand dollars. The Bank of North Dakota may have no more than ~~five~~ eight million dollars in outstanding loan guarantees under this section. The Bank of North Dakota may establish additional terms, conditions, and procedures, as necessary to meet the requirements of this section.

Approved March 15, 2007

Filed March 15, 2007

**CHAPTER 94****HOUSE BILL NO. 1100**

(Industry, Business and Labor Committee)  
(At the request of the Bank of North Dakota)

**AGRICULTURAL LOAN PROGRAM REVISIONS**

AN ACT to amend and reenact subsection 1 of section 6-09.9-02, subsection 1 of section 6-09.11-06, and subsection 1 of section 6-09.13-02 of the North Dakota Century Code, relating to definitions for the family farm survival act, loan restrictions for financial assistance for family farmers, and interest rates of loans for the agriculture partnership in assisting community expansion program.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 6-09.9-02 of the North Dakota Century Code is amended and reenacted as follows:

1. "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 a net worth of less than three hundred thousand. The industrial commission may adopt additional eligibility criteria in determining who is a farmer eligible for loans under this chapter.

**SECTION 2. AMENDMENT.** Subsection 1 of section 6-09.11-06 of the North Dakota Century Code is amended and reenacted as follows:

1. A loan under this chapter may not be greater than the lesser of ~~one~~ two hundred fifty thousand dollars or ninety percent of the appraised value of the security given for the loan, with the actual percentage to be determined by the Bank of North Dakota. The Bank may do all things and acts, may require such security, and may establish additional terms and conditions as is determined necessary to purchase a participation interest in a loan under this chapter.

**SECTION 3. AMENDMENT.** Subsection 1 of section 6-09.13-02 of the North Dakota Century Code is amended and reenacted as follows:

1. The Bank of North Dakota may make available an appropriate amount of funds to purchase participation interests in loans made by financial institutions for the purposes as set forth in section 6-09.13-03. ~~Interest charged by the lenders must be set by the financial institution and matched by the Bank of North Dakota. The rate may be fixed or variable.~~

Approved March 12, 2007  
Filed March 13, 2007

**CHAPTER 95****HOUSE BILL NO. 1342**

(Representatives Griffin, S. Meyer, Uglem)  
(Senators Behm, Erbele, Taylor)

**CREDIT REVIEW BOARD DUTIES**

AN ACT to amend and reenact section 6-09.10-02.1 of the North Dakota Century Code, relating to duties of the credit review board.

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

**SECTION 1. AMENDMENT.** Section 6-09.10-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.10-02.1. Additional duties of board.** In addition to other powers and duties enumerated in this chapter, the board shall:

1. Establish policy for the North Dakota agricultural mediation service.
2. Recommend policies and procedures to the industrial commission regarding farm loan programs of the Bank of North Dakota.
3. ~~Recommend policies and procedures regarding the adult farm management program to the state board for career and technical education.~~
4. ~~Participate in a farm management delivery system coordinated by the state board for career and technical education among the adult farm management program, agricultural mediation service, and North Dakota state university. The system must be available to any farmer and may be funded from moneys available in the fund described in this chapter, fees paid by farmers, or other sources.~~

Approved March 9, 2007

Filed March 12, 2007

**CHAPTER 96****HOUSE BILL NO. 1341**

(Representatives Griffin, S. Meyer, Uglem)  
(Senators Behm, Erbele, Taylor)

**AGRICULTURAL MEDIATION SERVICE ELIGIBILITY**

AN ACT to amend and reenact sections 6-09.10-03 and 6-09.10-04 of the North Dakota Century Code, relating to persons eligible for mediation.

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

**SECTION 1. AMENDMENT.** Section 6-09.10-03 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.10-03. North Dakota agricultural mediation service - Powers - Compensation and expenses - Fees.** The board shall meet at the call of the chair, as is necessary to fulfill its duties under this chapter. The agriculture commissioner shall administer the agricultural mediation service. The commissioner shall establish an agricultural mediation service to disseminate information to farmers concerning farm credit problems and to provide assistance to seek to resolve farm credit problems. The commissioner shall appoint an administrator of the agricultural mediation service. The commissioner shall hire staff, negotiators, and mediators who may mediate disputes involving farmers ~~and others, either of whom may request assistance~~ or other persons eligible for mediation with an agency of the United States department of agriculture. The board may charge the farmer and others a reasonable fee for any assistance, provided the fees are used to continue the service. Fees charged to ~~the farmer's creditors~~ mediation participants are limited to twenty-five dollars per hour, each, for the time spent in mediation sessions. The board shall adopt policies governing the negotiators, staff, and mediators hired under this section. Board members are entitled to receive ~~sixty-five~~ seventy-five dollars for each day of official service, as directed by the board. The board members are entitled to expenses as provided in sections 44-08-04 and 54-06-09. The expenses provided under this section may be paid from any funds available in the home-quarter purchase fund.

**SECTION 2. AMENDMENT.** Section 6-09.10-04 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.10-04. Request for assistance - Negotiation - Mediation.** Any farmer, creditor, ~~or other~~ person dealing with a farmer, ~~or other person eligible for mediation with an agency of the United States department of agriculture~~ may request assistance from the administrator. Upon receipt of the request, and upon consent of ~~the farmer and the other person~~ all parties to mediation, the negotiator or mediator shall encourage and assist the ~~farmer and the other person to reach~~ parties in reaching a voluntary settlement.

Approved March 5, 2007

Filed March 6, 2007

**CHAPTER 97****SENATE BILL NO. 2120**

(Senator Holmberg)

(At the request of the Bank of North Dakota)

**BEGINNING ENTREPRENEUR LOAN GUARANTEE  
PROGRAM CAPS**

AN ACT to amend and reenact subdivision c of subsection 1 of section 6-09.15-01 and section 6-09.15-03 of the North Dakota Century Code, relating to definitions and Bank of North Dakota participation caps for the beginning entrepreneur loan guarantee program; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subdivision c of subsection 1 of section 6-09.15-01 of the North Dakota Century Code is amended and reenacted as follows:

- c. Has, including the net worth of that person's dependents and spouse, if any, a net worth of less than ~~one~~ two 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.~~

**SECTION 2. AMENDMENT.** Section 6-09.15-03 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.15-03. Application for guarantee - Term - Annual fee.** A lender may apply to the Bank of North Dakota for a loan guarantee for a loan of up to one hundred thousand dollars. The Bank may approve a guarantee of a loan of up to five thousand dollars to a beginning entrepreneur for use by the beginning entrepreneur for accounting, legal, and business planning and other consulting or advisory services in planning for the establishment of a qualified revenue-producing enterprise. The Bank may approve a guarantee of a loan of up to twenty-five thousand dollars to a beginning entrepreneur without requiring the beginning entrepreneur to provide collateral for the loan. The term of a loan guarantee may not exceed five years. The Bank may charge a lender an annual fee during the term of a loan guarantee. The Bank may not guarantee more than ~~four~~ eight million dollars in loans outstanding under the beginning entrepreneur loan guarantee program.

**SECTION 3. EMERGENCY.** Section 2 of this Act is declared to be an emergency measure.

Approved March 2, 2007  
Filed March 2, 2007

**CHAPTER 98****SENATE BILL NO. 2180**

(Senators Klein, Wanzek, Wardner)  
(Representatives Belter, Brandenburg, Pollert)

**BIOFUEL PACE FUND USES**

AN ACT to amend and reenact sections 6-09.17-01, 6-09.17-02, 6-09.17-03, and 6-09.17-04 of the North Dakota Century Code, relating to the biofuel partnership in assisting community expansion fund; to provide for a legislative council study; to provide a continuing appropriation; to provide an effective date; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 6-09.17-01 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.17-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Biodiesel production facility" means a producer of a biodegradable, combustible liquid fuel that is derived from vegetable oil or animal fat and which is suitable for blending with diesel fuel for use in internal combustion diesel engines. The facility must be located in this state and:
  - a. Agricultural producers must hold at least ten percent of the ownership interest in the facility; or
  - b. Residents of this state must own at least fifty percent of the ownership interest of the facility.
2. "Biodiesel Biofuel partnership in assisting community expansion fund" or "fund" means a fund established to buy down the interest rate on loans to biodiesel and ethanol production facilities, to grain handling facilities, and to livestock operations as provided under this chapter.
2. "Biodiesel production facility" means a corporation, limited liability company, partnership, individual, or association involved in production of diesel fuel containing at least five percent biodiesel meeting the specifications adopted by the American society for testing and materials.
3. "Community" means the city or county in which an eligible biodiesel production facility is located, or a local development corporation, community organization, or any other group whose interest is in the economic growth of the area. "Biofuels retailer" means a retailer that dispenses and distributes biodiesel fuel and gasoline blends with greater than sixty percent ethanol.
4. "Ethanol production facility" means a producer of agriculturally derived denatured ethanol that is suitable for blending with a petroleum product

for use in internal combustion engines. The facility must be located in this state and:

- a. Agricultural producers must hold at least ten percent of the ownership interest in the facility; or
  - b. Residents of this state must own at least fifty percent of the ownership interest of the facility.
5. "Grain handling facility" means a grain storage facility licensed under chapter 60-02 or 60-02.1 which provides condominium storage of grain that is principally intended for the production of biofuels.
6. "Livestock operation" means a livestock feeding, handling, milking, or holding operation located in this state which uses as part of its operation a byproduct produced at a biodiesel or an ethanol production facility.

**SECTION 2. AMENDMENT.** Section 6-09.17-01 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.17-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

- 1. "Biodiesel production facility" means a producer of a biodegradable, combustible liquid fuel that is derived from vegetable oil or animal fat and which is suitable for blending with diesel fuel for use in internal combustion diesel engines. The facility must be located in this state and:
  - a. Agricultural producers must hold at least ten percent of the ownership interest in the facility; or
  - b. Residents of this state must own at least fifty percent of the ownership interest of the facility.
- 2. "Biodiesel Biofuel partnership in assisting community expansion fund" or "fund" means a fund established to buy down the interest rate on loans to biodiesel and ethanol production facilities and to livestock operations as provided under this chapter.
- 2. ~~"Biodiesel production facility" means a corporation, limited liability company, partnership, individual, or association involved in production of diesel fuel containing at least five percent biodiesel meeting the specifications adopted by the American society for testing and materials.~~
- 3. ~~"Community" means the city or county in which an eligible biodiesel production facility is located, or a local development corporation, community organization, or any other group whose interest is in the economic growth of the area. "Ethanol production facility" means a producer of agriculturally derived denatured ethanol that is suitable for blending with a petroleum product for use in internal combustion engines. The facility must be located in this state and:~~
  - a. Agricultural producers must hold at least ten percent of the ownership interest in the facility; or



- b. Residents of this state must own at least fifty percent of the ownership interest of the facility.
4. "Livestock operation" means a livestock feeding, handling, milking, or holding operation located in this state which uses as part of its operation a byproduct produced at a biodiesel or an ethanol production facility.

<sup>36</sup> **SECTION 3. AMENDMENT.** Section 6-09.17-02 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.17-02. Biodiesel Biofuel partnership in assisting community expansion fund - Continuing appropriation - Administration.** A Effective July 1, 2007, the biodiesel partnership in assisting community expansion fund is hereby established becomes the biofuel partnership in assisting community expansion fund. All moneys transferred into the fund, interest on fund moneys, and payments to the fund are hereby appropriated for the purposes of this chapter. This fund is not subject to section 54-44.1-11 and any unexpended and unobligated balance in the fund at the end of the biennium must be transferred to the state general fund. The Bank of North Dakota shall administer the fund. Notwithstanding any other provision of law, the Bank may transfer any unobligated moneys between funds that have been appropriated by the legislative assembly for interest buydown in the biofuel partnership in assisting community expansion fund and the partnership in assisting community expansion fund.

**SECTION 4. AMENDMENT.** Section 6-09.17-03 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.17-03. Fund - Purpose - Interest rate buydown.** Moneys in the biodiesel partnership in assisting community expansion fund must be used for the purpose of buying down the interest rate on loans made by a lead financial institution in participation with the Bank of North Dakota. The Bank of North Dakota's participation may not exceed eighty percent nor be less than fifty percent of the total loans. If the loan is approved by the lenders and there is evidence of the community's commitment and ability to fund its portion of the buydown, the fund's participation in the buydown must automatically be approved. During the first year of a biennium, the total amount from the fund used for interest rate buydowns for biofuels retailers may not exceed two hundred fifty thousand dollars and the total amount from the fund used for interest rate buydowns for grain handling facilities may not exceed two hundred fifty thousand dollars. The total amount from the fund used for interest rate buydowns for grain handling facilities and biofuels retailers may not exceed five hundred thousand dollars per biennium.

**SECTION 5. AMENDMENT.** Section 6-09.17-03 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.17-03. Fund - Purpose - Interest rate buydown.** Moneys in the biodiesel partnership in assisting community expansion fund must be used for the purpose of buying down the interest rate on loans made by a lead financial institution in participation with the Bank of North Dakota. The Bank of North Dakota's participation may not exceed eighty percent nor be less than fifty percent of the total

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<sup>36</sup> Section 6-09.17-02 was also amended by section 24 of House Bill No. 1014, chapter 14.

loans. If the loan is approved by the lenders and there is evidence of the community's commitment and ability to fund its portion of the buydown, the fund's participation in the buydown must automatically be approved.

**SECTION 6. AMENDMENT.** Section 6-09.17-04 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.17-04. Fund moneys - Eligible uses.**

1. a. The fund moneys may be used to participate in an interest rate buydown on a loan to a biodiesel or an ethanol production facility, to a grain handling facility, or to a livestock operation for the following eligible uses:
    - (1) Purchase or construction of real property and equipment.
    - (2) Expansion of facilities.
    - (3) ~~Working capital~~ Purchase or installation of equipment.
    - (4) ~~Inventory~~.
  - b. The fund moneys may be used to participate in an interest rate buydown on a loan to a biofuels retailer for the purchase or installation of pumps and related equipment.
  - c. The loan funds ~~cannot~~ may not be used to refinance any existing debt or for the relocation within this state of the ~~business within North Dakota~~ biodiesel or ethanol production facility, the grain handling facility, or the livestock operation.
2. ~~The community shall determine the amount of the interest rate buydown and apply to the Bank of North Dakota for participation from the biodiesel partnership in assisting community expansion fund. The funds for the community's portion of the buydown may come from a local development corporation, contributions, community funds, future dedicated tax programs, or any other community source. Any community funds provided for a buydown under chapter 6-09-14 for a biodiesel production facility may be considered as funds for the community's portion of the buydown under this chapter for that facility.~~
  3. ~~The fund participation portion in the buydown must be determined by the Bank of North Dakota based on economic conditions in the city or county in which the business is located.~~
  4. ~~The maximum amount from the fund in the interest rate buydown for a biodiesel or ethanol production facility may not exceed four five hundred thousand dollars per loan and not more than one loan may be provided to any single biodiesel or ethanol production facility under this chapter. However, if the partnership in assisting community expansion fund does not have adequate funds on hand for an interest rate buydown for a biodiesel production facility, the maximum amount from the fund under this subsection is increased to six hundred thousand dollars per loan. The community funds required for participation in the interest rate buydown are limited to the amount required when the fund provides two hundred fifty thousand dollars per loan. The maximum amount from the~~

fund in the interest rate buydown for a livestock operation may not exceed two hundred fifty thousand dollars to any single livestock operation under this chapter. The maximum amount from the fund in the interest rate buydown for a grain handling facility may not exceed fifty thousand dollars to any single facility. The maximum amount from the fund in the interest rate buydown for a biofuels retailer may not exceed ten thousand dollars to any single location of a biofuels retailer under this chapter.

3. The fund participation ~~must be~~ is limited to the amount required to buy down the interest to five hundred basis points below the national prime interest rate.

- ~~5.~~ 4. The Bank of North Dakota shall adopt rules to implement this chapter.

**SECTION 7. AMENDMENT.** Section 6-09.17-04 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.17-04. Fund moneys - Eligible uses.**

1. a. The fund moneys may be used to participate in an interest rate buydown on a loan to a biodiesel or an ethanol production facility or to a livestock operation for the following eligible uses:
  - (1) Purchase or construction of real property and equipment.
  - (2) Expansion of facilities.
  - (3) ~~Working capital~~ Purchase or installation of equipment.
  - (4) ~~Inventory~~.
- b. The loan funds ~~cannot~~ may not be used to refinance any existing debt or for the relocation within this state of the ~~business within North Dakota~~ biodiesel or ethanol production facility or the livestock operation.
2. ~~The community shall determine the amount of the interest rate buydown and apply to the Bank of North Dakota for participation from the biodiesel partnership in assisting community expansion fund. The funds for the community's portion of the buydown may come from a local development corporation, contributions, community funds, future dedicated tax programs, or any other community source. Any community funds provided for a buydown under chapter 6-09.14 for a biodiesel production facility may be considered as funds for the community's portion of the buydown under this chapter for that facility.~~
3. ~~The fund participation portion in the buydown must be determined by the Bank of North Dakota based on economic conditions in the city or county in which the business is located.~~
4. ~~The maximum amount from the fund in the interest rate buydown for a biodiesel or ethanol production facility may not exceed four five hundred thousand dollars per loan and not more than one loan may be provided to any single biodiesel or ethanol production facility under this chapter. However, if the partnership in assisting community expansion fund does~~

~~not have adequate funds on hand for an interest rate buydown for a biodiesel production facility, the maximum amount from the fund under this subsection is increased to six hundred thousand dollars per loan. The community funds required for participation in the interest rate buydown are limited to the amount required when the fund provides two hundred fifty thousand dollars per loan. The maximum amount from the fund in the interest rate buydown for a livestock operation may not exceed two hundred fifty thousand dollars to any single livestock operation under this chapter.~~

~~3.~~ 3. The fund participation ~~must be~~ is limited to the amount required to buy down the interest to five hundred basis points below the national prime interest rate.

~~5.~~ 4. The Bank of North Dakota shall adopt rules to implement this chapter.

**SECTION 8. LEGISLATIVE COUNCIL STUDY - BIOFUELS.** The legislative council shall consider studying, during the 2007-08 interim, the agronomic, economic, and environmental issues related to biofuels production in North Dakota, including the availability of feedstocks and other production resources, existing and future production capacity, farmer and processor contracting models, public and private financial incentives, and the transportation infrastructure necessary to meet optimum production and marketability levels for biofuels in this state. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 9. EFFECTIVE DATE.** Sections 2, 5, and 7 of this Act become effective on August 1, 2009.

**SECTION 10. EXPIRATION DATE.** Sections 1, 4, and 6 of this Act are effective through July 31, 2009, and after that date are ineffective.

Approved April 27, 2007  
Filed April 30, 2007

# CORPORATIONS

## CHAPTER 99

### SENATE BILL NO. 2153

(Senators Nething, Nelson)  
(Representatives Dahl, DeKrey, Kerzman)

## REGISTERED AGENTS AND CORPORATION LAW REVISIONS

AN ACT to create and enact chapter 10-01.1 of the North Dakota Century Code, relating to registered agents; to amend and reenact subsection 1 of section 10-06.1-15, subsection 2 of section 10-06.1-17, subsection 2 of section 10-06.1-18, sections 10-15-12 and 10-15-13, subsection 2 of section 10-15-39, subsection 4 of section 10-15-51, subsection 4 of section 10-15-52.4, sections 10-15-52.6 and 10-15-54, subsection 1 of section 10-19.1-10, sections 10-19.1-15 and 10-19.1-16, subsection 4 of section 10-19.1-103, subsection 5 of section 10-19.1-104.6, subsection 1 of section 10-19.1-118, sections 10-19.1-129 and 10-19.1-135, subsection 2 of section 10-19.1-136, section 10-19.1-138, subsection 1 of section 10-19.1-140, sections 10-19.1-141, 10-19.1-145, 10-19.1-146, and 10-19.1-147, subsection 1 of section 10-32-07, sections 10-32-12 and 10-32-13, subsection 4 of section 10-32-107, subsection 5 of section 10-32-108.6, subsection 1 of section 10-32-122, sections 10-32-132 and 10-32-138, subsection 2 of section 10-32-139, section 10-32-141, subsection 1 of section 10-32-143, sections 10-32-144, 10-32-148, 10-32-149, and 10-32-150, subsection 1 of section 10-33-06, sections 10-33-12 and 10-33-13, subsection 4 of section 10-33-92, subsection 1 of section 10-33-107, sections 10-33-120 and 10-33-128, subsection 2 of section 10-33-129, section 10-33-131, subsection 1 of section 10-33-133, sections 10-33-134, 10-33-138, and 10-33-139, subsection 1 of section 10-33-140, sections 10-34-04, 10-34-06, 10-34-09, 45-10.2-17, and 45-10.2-18, subsection 1 of section 45-10.2-23, section 45-10.2-79, subsection 2 of section 45-10.2-80, sections 45-10.2-82, 45-10.2-87, 45-10.2-107, 45-10.2-108, and 45-10.2-109, subsection 1 of section 45-15-03, sections 45-15-03.1 and 45-15-03.2, subsection 5 of section 45-21-04.2, subsection 2 of section 45-21-06, subsection 3 of section 45-22-03, sections 45-22-11 and 45-22-12, subsection 2 of section 45-22-13, sections 45-22-16, 45-22-17, and 45-22-21.1, subsection 1 of section 45-22-22, section 45-23-08, subsection 8 of section 54-09-04, and section 54-09-07 of the North Dakota Century Code, relating to farm corporations and farm limited liability companies, cooperative associations, business corporations, limited liability companies, nonprofit corporations, real estate investment trusts, limited partnerships, partnerships, limited liability partnerships, limited liability limited partnerships, and the secretary of state; to repeal section 10-15-12.1 of the North Dakota Century Code, relating to cooperative associations; and to provide an effective date.

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

**SECTION 1.** Chapter 10-01.1 of the North Dakota Century Code is created and enacted as follows:

**10-01.1-01. Citation.** This chapter may be cited as the "North Dakota Registered Agents Act".

**10-01.1-02. Definitions.** For purposes of this chapter, unless the context otherwise requires:

1. "Appointment of agent" means a statement appointing an agent for service of process filed by a domestic entity that is not a filing entity or a nonqualified foreign entity under section 10-01.1-12.
2. "Commercial registered agent" means a person that is listed under section 10-01.1-06 that serves in this state as the agent for service of process for another entity and that is:
  - a. An individual residing in this state; or
  - b. A domestic or foreign corporation or limited liability company.
3. "Domestic corporation" means a corporation, other than a foreign corporation, incorporated under any chapter of this code.
4. "Domestic entity" means an entity whose internal affairs are governed by the laws of this state.
5. "Domestic limited liability company" means a limited liability company, other than a foreign limited liability company, organized under chapter 10-32.
6. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:
  - a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
  - b. That may be directly reproduced in paper form by the recipient through an automated process.
7. "Entity" means a person that has a separate legal existence or has the power to acquire an interest in real property in its own name other than:
  - a. An individual;
  - b. A testamentary, inter vivos, or charitable trust, with the exception of a business trust, statutory trust, or similar trust;
  - c. An association or relationship that is not a partnership by reason of section 45-14-02 or a similar provision of the law of any other jurisdiction;
  - d. A decedent's estate; or

- e. A government or governmental subdivision, agency, or instrumentality, or a quasi-governmental instrumentality.
8. "Filed with the secretary of state" means, except as otherwise permitted by rule or law:
- a. That a record meeting the applicable requirements of this chapter, together with the fees provided in section 10-01.1-03, was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law.
  - b. That the secretary of state did then:
    - (1) Record the actual date on which the record was filed, and if different, the effective date of filing; and
    - (2) Record the record in the office of the secretary of state.
9. "Filing entity" means an entity that is created by the filing of a public organic document.
10. "Foreign corporation" means a corporation:
- a. That is incorporated under laws other than the laws of this state; and
  - b. That is a qualified foreign entity.
11. "Foreign entity" means an entity other than a domestic entity.
12. "Foreign limited liability company" means a limited liability company:
- a. That is organized under laws other than the laws of this state for a purpose for which a limited liability company may be organized under chapter 10-32; and
  - b. That is a qualified foreign entity.
13. "Foreign qualification document" means an application for a certificate of authority or other foreign qualification filing with the secretary of state by a foreign entity.
14. "Governance interest" means the right under the organic law or organic rules of an entity, other than as a governor, agent, assignee, or proxy, to:
- a. Receive or demand access to information concerning, or the books and records of, the entity;
  - b. Vote for the election of the governors of the entity; or
  - c. Receive notice of or vote on any or all issues involving the internal affairs of the entity.

15. "Governor" means a person by or under whose authority the powers of an entity are exercised and under whose direction the business and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.
16. "Interest" means:
  - a. A governance interest in an unincorporated entity;
  - b. A transferable interest in an unincorporated entity; or
  - c. A share or membership in a corporation.
17. "Interest holder" means a direct holder of an interest.
18. "Jurisdiction of organization", with respect to an entity, means the jurisdiction whose law includes the organic law of the entity.
19. "Noncommercial registered agent" means a person that is not listed as a commercial registered agent under section 10-01.1-06 that serves in this state as the agent for service of process for another entity and that is:
  - a. An individual residing in this state; or
  - b. A domestic or foreign corporation or a domestic or foreign limited liability company.
20. "Nonqualified foreign entity" means a foreign entity that is not authorized to transact business in this state pursuant to a filing with the secretary of state.
21. "Nonresident LLP statement" means a registration as provided in subsection 23 of section 45-22-01 and is:
  - a. A registration of a domestic limited liability partnership that does not have an office in this state; or
  - b. A registration of a foreign limited liability partnership that does not have an office in this state.
22. "Organic law" means the statutes, if any, other than this chapter, governing the internal affairs of an entity.
23. "Organic rules" means the public organic document and private organic rules of an entity.
24. "Person" means an individual, corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
25. "Principal executive office" means:
  - a. If the entity has one or more elected or appointed governors, then an office where one or more of the governors has an office; or



- b. If the entity has no elected or appointed governors, then the office of the registered agent of the entity.
26. "Private organic rules" means the rules, whether or not in a record, that:
- a. Govern the internal affairs of an entity;
  - b. Are binding on all of its interest holders; and
  - c. Are not part of its public organic document, if any.
27. "Public organic document" means the public record the filing of which creates an entity, and any amendment to or restatement of that record.
28. "Qualified foreign entity" means a foreign entity that is authorized to transact business in this state pursuant to a filing with the secretary of state.
29. "Record" means information is inscribed on a tangible medium or is stored in an electronic or other medium and is retrievable in perceivable form.
30. "Registered agent" means:
- a. A commercial registered agent; or
  - b. A noncommercial registered agent.
31. "Registered agent filing" means:
- a. The public organic document of a domestic filing entity;
  - b. A nonresident LLP statement;
  - c. A foreign qualification document; or
  - d. An appointment of agent.
32. "Registered office" means the address in this state of a registered agent as provided in this chapter and need not be the same as the principal place of business or principal executive office of the represented entity.
33. "Represented entity" means:
- a. A domestic filing entity;
  - b. A domestic or qualified foreign limited liability partnership that does not have an office in this state;
  - c. A qualified foreign entity;
  - d. A domestic or foreign unincorporated nonprofit association for which an appointment of agent has been filed;
  - e. A domestic entity that is not a filing entity for which an appointment of agent has been filed; or

- f. A nonqualified foreign entity for which an appointment of agent has been filed.
34. "Signed" means:
- a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the record with the present intention to authenticate that record; and
  - b. With respect to a record required by this chapter to be filed with the secretary of state, that:
    - (1) The record is signed by a person authorized to do so by the organic rules of the entity; and
    - (2) The signature and the record are communicated by a method or medium of communication acceptable by the secretary of state.
35. "Transferable interest" means the right under an entity's organic law to receive distributions from the entity.
36. "Type", with respect to an entity, means a generic form of entity:
- a. Recognized at common law; or
  - b. Organized under an organic law, whether or not some entities organized under that organic law are subject to provisions of that law that create different categories of the form of entity.

#### **10-01.1-03. Fees.**

- 1. The secretary of state shall collect the following fees when a filing is made under this chapter:
  - a. Commercial registered agent listing, one thousand dollars;
  - b. Commercial registered agent termination statement, five hundred dollars;
  - c. Statement of change, ten dollars except when the change is a change of address and in the secretary of state's opinion that change results from rezoning or postal reassignment;
  - d. Statement appointing an agent for service of process, ten dollars; and
  - e. Any process, notice, or demand for service, twenty-five dollars.
- 2. The secretary of state shall collect the following fees for copying and certifying a copy of any document filed under this chapter:
  - a. One dollar for every four pages, or fraction thereof, for copying a record;

- b. Fifteen dollars for furnishing a certificate; and
  - c. Five dollars for a search of records when supplying copies, certification, or written verification of facts.
3. The secretary of state may not collect a fee to file a statement of resignation.

**10-01.1-04. Addresses in filings.** Whenever a provision of this chapter, other than subdivision d of subsection 1 of section 10-01.1-11 requires that a filing state an address, the filing must state:

1. An actual street address or rural route box number in this state; and
2. A mailing address in this state if different from the address under subsection 1.

**10-01.1-05. Appointment of registered agent.**

1. A registered agent filing must state:
  - a. The name of the commercial registered agent of the represented entity; or
  - b. If the entity does not have a commercial registered agent, then the name and address of the noncommercial registered agent of the entity.
2. The appointment of a registered agent pursuant to subsection 1 is an affirmation by the represented entity that the agent has consented to serve as such.
3. Upon request and as soon as practicable, the secretary of state shall make available in a record a list of filings that contain the name of a registered agent. The list must:
  - a. List in alphabetical order the names of the registered agents; and
  - b. State:
    - (1) The type of filing;
    - (2) The name of the represented entity making the filing; and
    - (3) The address of the principal executive office if disclosed in the record filed by the represented entity.

**10-01.1-06. Listing of commercial registered agent.**

1. An individual residing in this state or a domestic or foreign corporation or limited liability company may become listed as a commercial registered agent by filing with the secretary of state a commercial registered agent listing statement signed by or on behalf of the person which states:

- a. The name of the individual or the name, type, and jurisdiction of organization of the entity;
  - b. That the person is in the business of serving as a commercial registered agent in this state; and
  - c. The address of a place of business of the person in this state to which service of process and other notice and documents being served on or sent to entities represented by it may be delivered.
2. If the name of a person filing a commercial registered agent listing statement is not distinguishable on the records of the secretary of state from the name of another commercial registered agent listed under this section, the person must adopt a fictitious name that is so distinguishable and use that name in its statement and when it does business in this state as a commercial registered agent.
  3. A commercial registered agent listing statement takes effect on filing.
  4. The secretary of state shall note the filing of the commercial registered agent listing statement in the record of the represented entity and in the index of filings maintained by the secretary of state for each entity represented by the registered agent at the time of the filing. The statement has the effect of deleting the address of the registered agent from the registered agent filing of each of those entities.

#### **10-01.1-07. Termination of listing of commercial registered agent.**

1. A commercial registered agent may terminate its listing as a commercial registered agent by filing with the secretary of state a commercial registered agent termination statement signed by or on behalf of the agent which states:
  - a. The name of the agent as currently listed under section 10-01.1-06; and
  - b. That the agent is no longer in the business of serving as a commercial registered agent in this state.
2. A commercial registered agent termination statement takes effect on the thirty-first day after the day on which it is filed.
3. The commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of the commercial registered agent termination statement.
4. When a commercial registered agent termination statement takes effect, the registered agent ceases to be an agent for service of process on each entity formerly represented by it.
  - a. Until an entity formerly represented by a terminated commercial registered agent appoints a new registered agent, service of process may be made on the entity as provided in section 10-01.1-13.

- b. Termination of the listing of a commercial registered agent under this section does not affect any contractual rights a represented entity may have against the agent or that the agent may have against the entity.

**10-01.1-08. Change of registered agent by entity.**

1. A represented entity may change the information currently on file under subsection 1 of section 10-01.1-05 by filing with the secretary of state a statement of change signed on behalf of the entity which states:
  - a. The name of the entity; and
  - b. The information that is to be in effect as a result of the filing of the statement of change.
2. The interest holders or governors of a domestic entity need not approve the filing of:
  - a. A statement of change under this section; or
  - b. A similar filing changing the registered agent or registered office of the entity in any other jurisdiction.
3. The appointment of a registered agent pursuant to subsection 1 is an affirmation by the represented entity that the agent has consented to serve as such.
4. A statement of change filed under this section takes effect on filing.
5. Instead of using the procedures in this section, a represented entity may change the information currently on file under subsection 1 of section 10-01.1-05 by amending its most recent registered agent filing as provided by the laws of this state other than this chapter for amending that filing.

**10-01.1-09. Change of name or address by noncommercial registered agent.**

1. If a noncommercial registered agent changes its name or its address as currently in effect with respect to a represented entity pursuant to subsection 1 of section 10-01.1-05, the agent shall file with the secretary of state, with respect to each entity represented by the agent, a statement of change signed by or on behalf of the agent which states:
  - a. The name of the entity;
  - b. If the name of the agent has changed, its new name; and
  - c. If the address of the agent has changed, its new address.
2. A statement of change filed under this section takes effect on filing.
3. A noncommercial registered agent shall promptly furnish the represented entity with notice in a record of the filing of a statement of change and the changes made by the filing.

**10-01.1-10. Change of name, address, or type of organization by commercial registered agent.**

1. If a commercial registered agent changes its name as a result of a merger, conversion, exchange, sale, reorganization, or amendment, its address as currently listed under subsection 1 of section 10-01.1-06, or its type of jurisdiction of organization, the agent shall file with the secretary of state a statement of change signed by or on behalf of the agent which states:
  - a. The name of the agent as currently listed under subsection 1 of section 10-01.1-06;
  - b. If the name of the agent has changed, its new name;
  - c. If the address of the agent has changed, its new address; and
  - d. If the type or jurisdiction of organization of the agent has changed, then its new type or jurisdiction of organization.
2. The filing of a statement of change under subsection 1 is effective to change the information regarding the commercial registered agent with respect to each entity represented by the agent.
3. A statement of change filed under this section takes effect on filing.
4. A commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of a statement or change relating to the name or address of the agent and the changes made by the filing.
5. If a commercial registered agent changes its address without filing a statement of change as required by this section, then the secretary of state may cancel the listing of the agent under section 10-01.1-06. A cancellation under this subsection has the same effect as a termination under section 10-01.1-07. Promptly after canceling the listing of an agent, the secretary of state shall notify:
  - a. Each entity represented by the agent, stating that the agent has ceased to be an agent for service of process on the entity and that, until the entity appoints a new registered agent, service of process may be made on the entity as provided in section 10-01.1-13; and
  - b. The agent, stating that the listing of the agent has been canceled under this section.
6. The secretary of state shall note the filing of the commercial registered agent change statement in the index of filings maintained by the secretary of state for each entity represented by the commercial registered agent at the time of the filing.

**10-01.1-11. Resignation of registered agent.**

1. Until the legal existence of a represented entity ceases, or until the authority of a foreign entity is withdrawn or revoked, a registered agent may resign at any time with respect to a represented entity by filing with

the secretary of state a statement of resignation signed by or on behalf of the registered agent which states:

- a. The name of the entity;
  - b. The name of the registered agent;
  - c. That the registered agent resigns from serving as agent for service of process for the entity; and
  - d. The name and address of the person to which the registered agent will send the notice required by subsection 3.
2. A statement of resignation takes effect on the earlier of the thirty-first day after the day on which it is filed or the appointment of a new registered agent for the represented entity.
  3. The registered agent shall promptly furnish the represented entity with notice in a record of the date on which a statement of resignation was filed.
  4. When a statement of resignation takes effect, the registered agent ceases to have responsibility for any matter tendered to it as agent for the represented entity. A resignation under this section does not affect any contractual rights the entity may have against the registered agent or that the registered agent may have against the entity.
  5. A registered agent may resign with respect to a represented entity whether or not the entity is in good standing but not after the legal existence of the represented entity has ceased or, in the case of a foreign entity, after its authority has been withdrawn or revoked.

**10-01.1-12. Appointment of agent by nonfiling or nonqualified foreign entity.**

1. A domestic entity that is not a filing entity or a nonqualified foreign entity may file with the secretary of state a statement appointing an agent for service of process signed on behalf of the entity which states:
  - a. The name, type, and jurisdiction of organization of the entity; and
  - b. The information required by subsection 1 of section 10-01.1-05.
2. A statement appointing an agent for service of process takes effect on filing.
3. The appointment of a registered agent under this section does not qualify a nonqualified foreign entity to do business in this state and is not sufficient alone to create personal jurisdiction over the nonqualified foreign entity in this state.
4. A statement appointing an agent for service of process may not be rejected for filing because the name of the entity filing the statement is not distinguishable on the records of the secretary of state from the name of another entity appearing in those records. The filing of a statement appointing an agent for service of process does not make the

name of the entity filing the statement unavailable for use by another entity.

5. An entity that has filed a statement appointing an agent for service of process may cancel the statement by filing a statement of cancellation, which shall take effect upon filing, and must state the name of the entity and that the entity is canceling its appointment of an agent for service of process in this state. A statement appointing an agent for service of process, which has not been canceled earlier, is effective for a period of five years after the date of filing. The secretary of state may destroy a statement provided for in this section after the statement has been on file for six years.
6. A statement appointing an agent for service of process for a nonqualified foreign entity terminates automatically on the date the entity becomes a qualified foreign entity.

**10-01.1-13. Service of process on entities, nonresident governors, and the secretary of state.**

1. Until the legal existence of an entity ceases, or until the authority of a foreign entity is withdrawn or revoked, service of any process, notice, or demand on the entity or nonresident governor may be served on:
  - a. A registered agent;
  - b. A governor of the entity, whether resident in this state or not;
  - c. Any responsible person found at the registered office or at the principal executive office if located in this state; or
  - d. On the secretary of state as provided in this section.
2. Service is perfected under this section pursuant to North Dakota Rules of Civil Procedure or applicable law.
3. The secretary of state is the agent for service of process:
  - a. When a foreign entity transacts business without a certificate of authority;
  - b. When a domestic entity has been dissolved;
  - c. If an entity that previously filed a registered agent filing with the secretary of state no longer has a registered agent; or
  - d. If the registered agent, governor, or responsible person cannot with reasonable diligence be served.
4. Service of process, notice, or demand on a registered agent must be in the form of a written document.
5. Service on the secretary of state:
  - a. Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication.



- b. Shall include the return of the sheriff, or the affidavit of an individual who is not a party, verifying that neither the registered agent nor a responsible person can be found at the registered office or at the principal executive office.
  - c. Is deemed personal service upon the entity and must be made by filing with the secretary of state:
    - (1) Three copies of the process, notice, or demand; and
    - (2) The fees provided in section 10-01.1-03.
  - d. Is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.
6. The secretary of state shall immediately forward, by registered mail, a copy of the process, notice, or demand addressed to:
- a. The entity at the principal executive office address of record;
  - b. Any address provided by any serving party; or
  - c. To any forwarding address provided by the United States postal service.
7. The secretary of state shall maintain a record of every process, notice, and demand served on the secretary of state under this section, including the date of service and the action taken with reference to the process, notice, or demand.
8. Service of process, notice, or demand may be perfected by any other means provided by law other than this chapter.
9. The court shall determine if service is proper.

**10-01.1-14. Duties of registered agent.** The only duties under this chapter of a registered agent who has complied with this chapter are:

- 1. To forward to the represented entity at the address most recently supplied to the agent by the entity any process, notice, or demand that is served on the agent;
- 2. To provide the notices required by this chapter to the entity at the address most recently supplied to the agent by the entity; and
- 3. If the agent is:
  - a. A noncommercial registered agent, then to keep current the information required by subsection 1 of section 10-01.1-05 in the most recent registered agent filing for the entity; or
  - b. A commercial registered agent, then to keep current the information listed for it under subsection 1 of section 10-01.1-06.

**10-01.1-15. Jurisdiction and venue.** The appointment or maintenance in this state of a registered agent does not by itself create the basis for personal

jurisdiction over the represented entity in this state. The address of the agent does not determine venue in an action or proceeding involving the entity.

**10-01.1-16. Relation to Electronic Signatures in Global and National Commerce Act.** This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.], but does not modify, limit, or supersede section 101(c) of that Act [15 U.S.C. 7001(c)] or authorize delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].

**10-01.1-17. Savings clause.** This chapter does not affect an action or proceeding commenced or right accrued before the effective date of this chapter.

**SECTION 2. AMENDMENT.** Subsection 1 of section 10-06.1-15 of the North Dakota Century Code is amended and reenacted as follows:

1. Every farming or ranching corporation or limited liability company shall file an initial report with its articles of incorporation. The report must be signed by the incorporators or organizers and must contain the following:
  - a. The name of the corporation or limited liability company.
  - b. ~~The address of the registered office of the corporation or limited liability company in this state and the name of its registered agent in this state at that address.~~
  - e. With respect to each shareholder or member:
    - (1) The name and address of each, including the names and addresses and relationships of trusts and estates that own shares or membership interests;
    - (2) The number of shares or membership interests or percentage of shares or membership interests owned by each;
    - (3) The relationship of each;
    - (4) A statement of whether each is a citizen or permanent resident alien of the United States; and
    - (5) A statement of whether each is actively engaged in operating the farm or ranch, whether each resides on the farm or ranch, and whether each depends principally on farming or ranching for a livelihood.
  - ~~e.~~ c. With respect to management:
    - (1) If a corporation, then the names and addresses of the officers and members of the board of directors; or
    - (2) If a limited liability company, then the names and addresses of the managers and members of the board of governors.

- e. d. A statement listing the acreage [hectarage] and location listed by section, township, range, and county of all land in the state owned or leased by the corporation or limited liability company and used for farming or ranching.

**SECTION 3. AMENDMENT.** Subsection 2 of section 10-06.1-17 of the North Dakota Century Code is amended and reenacted as follows:

- 2. The name of the registered agent of the corporation or limited liability company as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of the registered office of the corporation or limited liability company in this state and the name of the corporation's or limited liability company's registered agent in this state at that address.

**SECTION 4. AMENDMENT.** Subsection 2 of section 10-06.1-18 of the North Dakota Century Code is amended and reenacted as follows:

- 2. The address name of the registered office agent of the corporation or limited liability company in this state as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the name and address of its the noncommercial registered agent in this state.

**SECTION 5. AMENDMENT.** Section 10-15-12 of the North Dakota Century Code is amended and reenacted as follows:

**10-15-12. Principal office - Registered agent.**

- 1. A cooperative shall maintain in this state either its:
  - a. Its principal office; or a
  - b. A registered agent as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of the registered office in this state.
- 2. The board may establish or change the location of the principal office or name and address of the registered agent by causing a statement in writing to be filed as an amendment to the articles as provided in section 10-15-53. Such statement shall set forth the name of the cooperative and the location of its principal office or the name and address of the registered agent as established or changed. For the purposes of this chapter, the post-office address of an existing cooperative becoming subject to this chapter, as set forth in the articles for its business office, shall be considered its registered office and the secretary of the cooperative shall be considered its registered agent unless the articles are amended otherwise.
- 3. The board may establish a registered agent as provided in chapter 10-01.1 by causing a statement in writing to be filed as an amendment to the articles as provided in section 10-15-53. Such statement shall set forth:
  - a. The name of the cooperative; and

- b. The name of the registered agent as provided in chapter 10-01.1, and if a noncommercial registered agent, the address of the registered office.
4. As provided in chapter 10-01.1:
- a. The board may change:
    - (1) A registered agent;
    - (2) The address of a registered agent; or
    - (3) The name of a registered agent.
  - b. A registered agent may resign by mailing a written notice to both the secretary of state and the cooperative. The resignation becomes effective when the cooperative names a new registered agent or sixty days after the receipt of notice by the secretary of state, whichever is sooner.

**SECTION 6. AMENDMENT.** Section 10-15-13 of the North Dakota Century Code is amended and reenacted as follows:

**10-15-13. Service of process.** The registered agent appointed by a cooperative shall be an agent of the cooperative and any nonresident director upon whom any Any process, notice, or demand required or permitted by law to be served upon the cooperative or its directors may be served as provided in chapter 10-01.1.

Whenever a cooperative does not appoint or maintain a registered agent in this state, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of such cooperative upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand must be made by delivering to and leaving with the secretary of state, or with any clerk having charge of the corporation department of the secretary of state's office, an original and two copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of state, the secretary of state shall immediately cause one of the copies thereof to be forwarded by registered or certified mail, addressed to the cooperative at the address of the principal place of business or to the nonresident director at the nonresident director's last reported address, as the case may be. Any service on the secretary of state is returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices, and demands served upon the secretary of state under this section and shall record therein the time of such service and the secretary of state action with reference thereto.

Nothing herein contained limits or affects the right to serve any process, notice, or demand required or permitted by law to be served upon a cooperative or its directors in any other manner permitted by law.

**SECTION 7. AMENDMENT.** Subsection 2 of section 10-15-39 of the North Dakota Century Code is amended and reenacted as follows:

2. The location of the principal office, or the complete address of the present registered agent, shall be set forth as of the time of adoption of the restated articles. The name and address of a new registered agent as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of such noncommercial registered agent in this state may be set forth in lieu thereof of the location of the principal office.

**SECTION 8. AMENDMENT.** Subsection 4 of section 10-15-51 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~The~~ As provided in chapter 10-01.1, the name of the registered agent, and if a noncommercial registered agent, the address of the proposed noncommercial registered office of the cooperative agent in this state and the name of its proposed registered agent in this state at such address.

**SECTION 9. AMENDMENT.** Subsection 4 of section 10-15-52.4 of the North Dakota Century Code is amended and reenacted 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 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 as provided in section 10-01.1-13.~~

**SECTION 10. AMENDMENT.** Section 10-15-52.6 of the North Dakota Century Code is amended and reenacted as follows:

**10-15-52.6. Change of registered office or registered agent of foreign cooperative.** As provided in section 10-01.1-11:

1. A foreign cooperative authorized to transact business in this state may change its registered office or, its registered agent, or both, ~~upon filing in the office of the secretary of state a statement setting forth:~~
  - a. ~~The name of the cooperative.~~
  - b. ~~If the address of its registered office is to be changed, the new address of its registered office.~~
  - c. ~~If its registered agent is to be changed, the name of its new registered agent.~~
  - d. ~~That the addresses of its registered office and the business office of its registered agent, as changed, will be identical.~~
  - e. ~~That the change was authorized by resolution duly adopted by its board of directors.~~

~~The statement must be executed by the cooperative by its president or a vice president and delivered to the secretary of state. If a registered agent changes its name or its business address, the agent may change its name or address, as the case may be, for any cooperatives of which~~

it is the registered agent by filing a statement as required above with one copy for each cooperative listed on the certificate. The statement need only be signed by the registered agent, need not be responsive to subdivision e or e, and must recite that a copy of the statement has been mailed to each listed cooperative or to the legal representative of each. A copy of the statement must be mailed by the registered agent to each listed cooperative or the legal representative of each cooperative.; and

2. A registered agent of a foreign cooperative may resign upon filing a written notice with the secretary of state, including a statement that a signed copy of the notice has been given to the foreign cooperative at its principal executive office or to a legal representative of the cooperative. The appointment of the agent terminates upon the expiration of thirty days after filing the notice with the secretary of state. The registered agent must also give a signed copy of the notice to the foreign cooperative at its principal executive office or a legal representative of the cooperative.

**SECTION 11. AMENDMENT.** Section 10-15-54 of the North Dakota Century Code is amended and reenacted as follows:

**10-15-54. Fees.** No document may be filed or recorded nor any certificate issued until all fees therefor have been paid. Any fee or penalty due under this chapter may be recovered in a suit brought by the attorney general in the name of the state. The secretary of state shall charge and collect from any association for:

1. Filing articles of association and issuing a certificate of association, thirty dollars.
2. Filing articles of amendment and issuing a certificate of amendment, twenty dollars.
3. Filing restated articles of association, thirty dollars.
4. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.
5. Filing articles or decree of dissolution, twenty dollars.
6. Receiving service of any process, notice, or demand, ~~twenty five dollars~~ the fee provided in section 10-01.1-03.
7. Filing an application of a foreign cooperative for a certificate of authority to do business in this state and issuing a certificate therefor, forty dollars.
8. For filing a name reservation, a transfer of name reservation, a cancellation of name reservation, or a consent to use of name, ten dollars.
9. For filing a change of registered office or change of registered agent, or both, the fees provided in section 10-01.1-03.
10. Filing any other document or statement, or issuing any other certificate, twenty dollars.

- ~~40.~~ 11. Any document submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the document.

<sup>37</sup> **SECTION 12. AMENDMENT.** Subsection 1 of section 10-19.1-10 of the North Dakota Century Code is amended and reenacted as follows:

1. The articles of incorporation must contain:
  - a. The name of the corporation.
  - b. The address name of the registered office of agent as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the corporation and the name of its registered agent at that address of that noncommercial registered agent in this state.
  - c. The aggregate number of shares that the corporation has authority to issue.
  - d. The name and address of each incorporator.
  - e. The effective date of incorporation if a later date than that on which the certificate of incorporation is issued by the secretary of state, which may not be later than ninety days after the date on which the certificate of incorporation is issued.

**SECTION 13. AMENDMENT.** Section 10-19.1-15 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-15. Registered office - Registered agent.**

- ~~4.~~ A corporation shall continuously maintain a registered office agent in this state as provided by chapter 10-01.1, and if a noncommercial registered agent, then the address of that noncommercial registered agent 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 appoint and continuously maintain a registered agent who may be:
  - a. An individual residing in this state;
  - b. A domestic corporation, whether incorporated under this chapter or under another provision of this code, or domestic limited liability company; or
  - e. A foreign corporation, whether authorized to do business or conduct activities under this chapter or another provision of this

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<sup>37</sup> Section 10-19.1-10 was also amended by section 5 of House Bill No. 1241, chapter 101.

code, or a foreign limited liability company authorized to transact business in this state.

3. 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 that capacity must be filed with the secretary of state, together with the fees provided in section 10-19.1-147.

**SECTION 14. AMENDMENT.** Section 10-19.1-16 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-16. Change of registered office or registered agent - Change of name of registered agent.** As provided in chapter 10-01.1:

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 with the secretary of state, along with the fees provided in section 10-19.1-147, a statement containing:
  - a. The name of the corporation.
  - b. If the address of its registered office is to be changed, the new address of its registered office.
  - c. If its registered agent is to be changed, the name of its new registered agent.
  - d. If the name of its registered agent is to be changed, the name of its registered agent as changed.
  - e. 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.
  - f. 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 for each corporation as required in subsection 1, except that it need be signed only by the registered agent, need not be responsive to subdivision f of subsection 1, 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.
4. The fee prescribed in section 10-19.1-147 for change of registered office must be refunded when in the secretary of state's opinion a change of



~~address of registered office results from rezoning or postal reassignment.~~

<sup>38</sup> **SECTION 15. AMENDMENT.** Subsection 4 of section 10-19.1-103 of the North Dakota Century Code is amended and reenacted as follows:

4. If the surviving organization in a merger will be a foreign corporation or foreign limited liability company and will transact business in this state, the organization shall comply with the provisions of this chapter with respect to foreign corporations or chapter 10-32 with respect to foreign limited liability companies. In every case, the surviving foreign corporation or foreign limited liability company 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 organization and in a proceeding for the enforcement of the rights of a dissenting owner of an ownership interest of a constituent organization against the surviving foreign corporation or foreign limited liability company;
  - b. An irrevocable appointment of the secretary of state as the organization's agent to accept service of process in any proceeding, and an address to which process may be forwarded as provided in section 10-01.1-13; and
  - c. An agreement that the organization will promptly pay to the dissenting owners of ownership interests of each domestic constituent corporation and domestic constituent limited liability company the amount, if any, to which they are entitled under section 10-19.1-88 or 10-32-55.

**SECTION 16. AMENDMENT.** Subsection 5 of section 10-19.1-104.6 of the North Dakota Century Code is amended and reenacted as follows:

5. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection as provided in section 10-01.1-13.

**SECTION 17. AMENDMENT.** Subsection 1 of section 10-19.1-118 of the North Dakota Century Code is amended and reenacted as follows:

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;

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<sup>38</sup> Section 10-19.1-103 was also amended by section 31 of House Bill No. 1241, chapter 101.

- 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 as provided in chapter 10-01.1;
- 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 as provided in chapter 10-01.1; 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.

**SECTION 18. AMENDMENT.** Section 10-19.1-129 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-129. Service of process on corporation, foreign corporation, and nonresident directors.**

- 1. ~~The registered agent must be an agent of the corporation or foreign corporation and any nonresident director upon whom any~~ Any process, notice, or demand required or permitted by law to be served on the corporation, the foreign corporation, or any director may be served as provided in section 10-01.1-13.
  - a. ~~When a foreign corporation transacts business without a certificate of authority, or when the certificate of authority of a foreign corporation is suspended or revoked, the secretary of state is an agent of the foreign corporation for service of process, notice, or demand.~~
  - b. ~~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 or foreign corporation may be served:
  - a. On the registered agent of the corporation;
  - b. On an officer of the corporation or foreign corporation;
  - c. On any responsible person found at the registered office or at the principal executive office if located in this state; or
  - d. On the secretary of state as provided in this section.
- 3. If neither the registered agent nor a responsible person can be found at the registered office, or if a responsible person cannot be found at the principal executive office if located in this state, then the secretary of

state is an agent of the corporation or foreign corporation upon whom the process, notice, or demand may be served.

a. Service on the secretary of state:

- (1) Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication.
- (2) Shall include the return of the sheriff, or the affidavit of an individual who is not a party, verifying that neither the registered agent nor a responsible person can be found at the registered office or at the principal executive office.
- (3) Is deemed personal service upon the corporation and must be made by filing with the secretary of state:
  - (a) Three copies of the process, notice, or demand; and
  - (b) The fees provided in section 10-19.1-147.
- (4) Is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.

b. The secretary of state shall immediately forward, by registered mail, addressed to the corporation or foreign corporation at the registered office or principal executive office, a copy of the process, notice, or demand.

4. Process, notice, or demand may be served on a dissolved corporation as provided in this subsection. The court shall determine if service is proper. If a corporation has voluntarily dissolved or a court has entered a decree of dissolution, then service may be made according to subsection 2 so long as claims are not finally barred under section 10-19.1-124. If a corporation has been involuntarily dissolved pursuant to section 10-19.1-146, then service may be made according to subsection 2.
5. The secretary of state shall maintain a record of every process, notice, and demand served on the secretary of state under this section, including the date of service and the action taken with reference to the process, notice, or demand.
6. This section does not limit 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.

**SECTION 19. AMENDMENT.** Section 10-19.1-135 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-135. Foreign corporation application for certificate of authority.**

1. An applicant for a certificate shall file with the secretary of state an application executed by an authorized person and setting forth:
  - a. The name of the foreign corporation and, if different, the name under which it proposes to transact business in this state;

- b. The jurisdiction of its incorporation;
  - c. The date of incorporation in the jurisdiction of its incorporation and the period of duration of the foreign corporation;
  - d. The address of the principal executive office of the foreign corporation;
  - e. The address name of the ~~proposed~~ registered office agent of the foreign corporation ~~in this state~~;
  - f. ~~The name of the proposed~~ as provided in chapter 10-01.1, and if a noncommercial registered agent in this state, as defined under section 10-19.1-15, the address of such noncommercial registered agent in this state;
  - ~~g.~~ f. The purpose of the corporation which it proposes to pursue in transacting business in this state;
  - ~~h.~~ g. The names and addresses of the directors and officers of the foreign corporation; and
  - ~~i.~~ h. Any additional information deemed necessary or appropriate by the secretary of state to enable the secretary of state to determine whether the foreign corporation is entitled to a certificate of authority to transact business in this state.
2. The application must be accompanied by payment of the fees provided in section 10-19.1-147 together with a certificate of good standing or a certificate of existence duly authenticated by the incorporating officer of the state or country where the corporation is incorporated ~~and the consent of the designated registered agent for service of process to serve in that capacity.~~

**SECTION 20. AMENDMENT.** Subsection 2 of section 10-19.1-136 of the North Dakota Century Code is amended and reenacted as follows:

- 2. File the application, and the certificate of good standing or certificate of existence; ~~and the consent of the registered agent;~~ and

**SECTION 21. AMENDMENT.** Section 10-19.1-138 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-138. Foreign corporation - Registered agent - Registered office - Certain reports.** A foreign corporation authorized to transact business in this state shall:

- ~~1. Establish and continuously maintain a registered office in the same manner as provided in section 10-19.1-15;~~
- ~~2. Appoint and continuously maintain a registered agent in the same manner as provided in section 10-19.1-15; and~~
- ~~3. File a report upon any change in the address of its registered office or in the name or address of its registered agent in the same manner as provided in section 10-19.1-16 agent in this state as provided in chapter~~

10-01.1 and, if a noncommercial registered agent, the address of such noncommercial registered agent in this state.

**SECTION 22. AMENDMENT.** Subsection 1 of section 10-19.1-140 of the North Dakota Century Code is amended and reenacted as follows:

1. 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 the certificate, the foreign corporation shall file with the secretary of state an application for withdrawal, together with the fees provided in section 10-19.1-147, which must set forth:
  - a. The name of the corporation and the state or country under the laws of which it is incorporated;
  - b. That the corporation is not transacting business in this state;
  - c. That the corporation surrenders its authority to transact business in this state;
  - d. That ~~the corporation revokes the authority of its registered agent in this state to accept service of process and consents to that service of process on the corporation by service upon the secretary of state~~ 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 as provided in section 10-01.1-13;
  - e. A post-office address to which a person may mail a copy of any process against the corporation; and
  - f. Any additional information necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees payable by the foreign corporation.

**SECTION 23. AMENDMENT.** Section 10-19.1-141 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-141. Foreign corporation - Revocation of certificate of authority.**

1. The certificate of authority of a foreign corporation to transact business in this state may be revoked by the secretary of state ~~upon the occurrence of either of these events if:~~
  - a. The foreign corporation has failed to:
    - (1) ~~Maintain~~ Appoint and maintain a registered agent, and if a noncommercial registered agent, then the registered office of the noncommercial registered agent as required by this provided in chapter 10-01.1; or
    - (2) ~~Appoint and maintain a registered agent as required by this chapter;~~

- (3) ~~File a report upon any change in the address of its registered office;~~
  - (4) ~~File a report upon any change in the name or business address of the registered agent; or~~
  - (5) File in the office of the secretary of state any amendment to its application for a certificate of authority as specified in section 10-19.1-137; or
- b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the foreign corporation pursuant to this chapter.
2. Except for revocation of the certificate of authority for failure to file the annual report for which the certificate of authority may be revoked as provided in ~~section 10-19.1-146~~ as provided in section 10-19.1-146, no certificate of authority of a foreign corporation may be revoked by the secretary of state unless:
- a. The secretary has given the foreign corporation at least sixty days' notice by mail addressed to its registered agent at the registered office in this state or, if the foreign corporation fails to appoint and maintain a registered agent in this state, then addressed to its principal executive office; and
  - b. During the sixty-day period, the foreign corporation has failed to file:
    - (1) File the report of change as provided in chapter 10-01.1 regarding the registered office or the registered agent; ~~to file~~
    - (2) File any amendment; ~~or to correct~~
    - (3) Correct the misrepresentation.
3. Upon the expiration of sixty days after the mailing of the notice, the authority of the foreign corporation to transact business in this state ceases; and the secretary of state shall issue a ~~certificate~~ notice of revocation and shall mail the ~~certificate~~ notice to the principal executive office of the foreign corporation.

**SECTION 24. AMENDMENT.** Section 10-19.1-145 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-145. Foreign corporation - Service of process.** Service of process on a foreign corporation must be as provided in section ~~10-19.1-129~~ 10-01.1-13.

<sup>39</sup> **SECTION 25. AMENDMENT.** Section 10-19.1-146 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-146. Secretary of state - Annual report of corporations and foreign corporations - Involuntary dissolution - Revocation of certificate of authority.**

1. Each corporation and each foreign corporation authorized to transact business in this state shall file, within the time provided in subsection 3, an annual report setting forth:
  - a. The name of the corporation or foreign corporation and the state or country under the laws of which the corporation or foreign corporation is incorporated.
  - b. The address of the registered office of the corporation or foreign corporation in this state, the name of the corporation's or foreign corporation's registered agent in this state at that address, and the address of the corporation's or foreign corporation's principal executive office.
  - c. A brief statement of the character of the business in which the corporation or foreign corporation is actually engaged in this state.
  - d. The names and respective addresses of the officers and directors of the corporation or foreign corporation.
  - e. A statement of the aggregate number of shares the corporation or foreign corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
  - f. 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.
  - g. 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 total gross income of the corporation for the twelve months ending on December thirty-first preceding the date provided under this section for the filing of the annual report and the gross amount accumulated by the corporation at or from places of business in this state. If, on December thirty-first preceding the time provided under this section for the filing of the 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 total gross income must be furnished for the period between the

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<sup>39</sup> Section 10-19.1-146 was also amended by section 36 of House Bill No. 1241, chapter 101.

date of incorporation or the date of the corporation's authorization to transact business in this state and December thirty-first.

- h. Any additional information necessary or appropriate to enable the secretary of state to determine and assess the proper amount of fees payable by the corporation.
2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report except as to the information required by subdivision g of subsection 1 which must be given as of the close of business on December thirty-first next preceding the date herein provided for the filing of the report, or, in the alternative, data of the fiscal year ending next preceding this report may be used. The annual report must be signed as provided in subsection 51 of section 10-19.1-01, or the articles or the bylaws or a resolution approved by the affirmative vote of the required proportion or number of the directors or holders of shares entitled to vote. If the corporation or foreign corporation is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or foreign corporation by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years. The secretary of state, or any employee or legal representative of the secretary of state, may not disclose the information reported under subdivision g of subsection 1 to any person, except a person that is verified to be a shareholder of the corporation or foreign corporation, a legal representative of the shareholder for which information is requested, or to the tax commissioner or any employee or legal representative of the tax commissioner, who may not disclose the information and may use the information only for the administration of the tax laws.
3. Except for the first annual report, the annual report must be delivered to the secretary of state:
  - a. By a corporation, before August second of each year; and
  - b. By a foreign corporation, before May sixteenth of each year.

The first annual report of either a corporation or foreign corporation must be delivered before the date provided in the year following the calendar year in which the certificate of incorporation or certificate of authority was issued by the secretary of state, or in the case of a corporation, in the year following the calendar year of the effective date stated in the articles of incorporation. An annual report in a sealed envelope postmarked by the United States postal service before the date provided in this subsection, or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in this subsection, is compliance with this requirement. When the filing date falls on Saturday, Sunday, or other holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day is compliance with this requirement.

4. The secretary of state must file the annual report if the annual report conforms to the requirements of this section and all fees have been paid as provided in section 10-19.1-147.



- a. If the annual report does not conform, it must be returned to the corporation or foreign corporation for any necessary correction or payment.
  - b. If the annual report is corrected and filed before the date provided in subsection 3, or within thirty days after the annual report was returned by the secretary of state for correction, then the penalties provided in section 10-19.1-147 for the failure to file an annual report within the time provided do not apply.
5. The secretary of state may extend the annual report filing date provided in subsection 3 if a written application for an extension is delivered before the date provided in subsection 3. A corporation or foreign corporation with a fiscal year ending within three months before the date provided in subsection 3 may make a written request for an extension, to apply to reports for subsequent years until the fiscal year is changed.
6. Three months after the date provided in subsection 3, any corporation or foreign corporation failing to file its annual report is not in good standing. After the corporation or foreign corporation becomes not in good standing, the secretary of state shall notify the corporation or foreign corporation that its certificate of incorporation or certificate of authority is not in good standing and that it may be dissolved or revoked as provided in subsection 7 or 8.
  - a. The secretary of state must mail the notice of impending dissolution or revocation to the last registered agent at the last registered office ~~of record~~.
  - b. If the corporation or foreign corporation files its annual report after the notice is mailed, together with the filing fee and the late filing penalty fee provided in section 10-19.1-147, then the secretary of state shall restore its certificate of incorporation or certificate of authority to good standing.
7. A corporation that fails to file its annual report, together with the filing and penalty fees for late filing provided in section 10-19.1-147, within one year after the date provided in subsection 3 ceases to exist as a corporation and is considered involuntarily dissolved by operation of law.
  - a. 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.
  - b. Notice by the secretary of state must be mailed to the last registered agent at the last registered office ~~of record~~.
8. A foreign corporation that fails to file its annual report, together with the filing and penalty fees for late filing provided in section 10-19.1-147, within one year after the date provided in subsection 3 forfeits its authority to transact business in this state.
  - a. The secretary of state shall note the revocation of the foreign corporation's certificate of authority on the records of the secretary

of state and shall give notice of the action to the foreign corporation.

- b. Notice by the secretary of state must be mailed to the foreign corporation's last registered agent at the last registered office of record.
  - c. The decision by the secretary of state that a certificate of authority must be revoked under this subsection is final.
9. A corporation dissolved for failure to file an annual report, or a foreign corporation whose authority was forfeited by failure to file an annual report, may be reinstated by filing a past-due report, together with the filing and penalty fees for an annual report and a reinstatement fee as provided in section 10-19.1-147. The fees must be paid and an annual report filed within one year following the involuntary dissolution or revocation. Reinstatement under this subsection does not affect the rights or liability for the time from the dissolution or revocation to the reinstatement.

<sup>40</sup> **SECTION 26. AMENDMENT.** Section 10-19.1-147 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-147. Fees for filing records - Issuing certificates - License fees.**

The secretary of state shall charge and collect for:

1. Filing articles of incorporation and issuing a certificate of incorporation, ~~thirty~~ one hundred dollars.
2. Filing articles of amendment, twenty dollars.
3. Filing articles of correction, twenty dollars.
4. Filing restated articles of incorporation, thirty dollars.
5. Filing articles of conversion of a corporation, fifty dollars and:
  - a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
  - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
6. Filing abandonment of conversion, fifty dollars.

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<sup>40</sup> Section 10-19.1-147 was also amended by section 37 of House Bill No. 1241, chapter 101.

7. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.
8. Filing articles of abandonment of merger, fifty dollars.
9. Filing an application to reserve a corporate name, ten dollars.
10. Filing a notice of transfer of a reserved corporate name, ten dollars.
11. Filing a cancellation of reserved corporate name, ten dollars.
12. Filing a consent to use of name, ten dollars.
13. Filing a statement of change of address of registered office ~~or~~ change of registered agent, or both, ~~ten dollars~~.
14. ~~Filing a statement of~~ or a change of address of registered office by registered agent, ~~ten dollars for each corporation affected by such change~~.
15. ~~Filing a registered agent's consent to serve in such capacity, ten dollars~~.
16. ~~Filing a resignation as registered agent, ten dollars~~ the fee provided in section 10-01.1-03.
- ~~17.~~ 14. Filing a statement of the establishment of a series of shares, twenty dollars.
- ~~18.~~ 15. Filing a statement of cancellation of shares, twenty dollars.
- ~~19.~~ 16. Filing a statement of reduction of stated capital, twenty dollars.
- ~~20.~~ 17. Filing a statement of intent to dissolve, ten dollars.
- ~~21.~~ 18. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
- ~~22.~~ 19. Filing articles of dissolution, twenty dollars.
- ~~23.~~ 20. 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 one hundred~~ forty-five dollars.
- ~~24.~~ 21. 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.
- ~~25.~~ 22. Filing a certificate of fact stating a merger or consolidation of a foreign corporation holding a certificate of authority to transact business in this state, fifty dollars.
- ~~26.~~ 23. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.
- ~~27.~~ 24. Filing an annual report of a corporation or foreign corporation, twenty-five dollars.

- a. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
    - (1) Within ninety days after the date provided in subsection 3 of section 10-19.1-146, twenty dollars;
    - (2) Thereafter, sixty dollars; and
    - (3) After the involuntary dissolution of a corporation, or the revocation of the certificate of authority of a foreign corporation, the reinstatement fee of one hundred thirty-five dollars.
  - b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-19.1-146, or the annual report lacks sufficient payment as required by this subsection.
28. 25. Filing any process, notice, or demand for service, ~~twenty-five dollars~~ the fee provided in section 10-01.1-03.
29. 26. Furnishing a certified copy of any record, instrument, or paper relating to a corporation, one dollar for every four pages or fraction and fifteen dollars for the certificate and affixing the seal thereto.
30. ~~License fee of fifty dollars for the first fifty thousand dollars of a corporation's authorized shares, or fraction, and the further sum of ten dollars if paid at the time of authorization, or twelve dollars if paid after authorized shares are issued, for every additional ten thousand dollars of its authorized shares, or fraction thereof, in excess of fifty thousand dollars.~~
- a. A license fee is payable by a corporation at the time of:
    - (1) Filing articles of incorporation;
    - (2) Filing articles of amendment increasing the number or value of authorized shares; or
    - (3) Filing articles of merger or consolidation increasing the number or value of authorized shares a surviving or new corporation will have authority to issue above the aggregate number or value of shares the constituent corporations had authority to issue.
  - b. A license fee payable on an increase in authorized shares must be imposed only on the additional shares, but the amount of previously authorized shares must be taken into account in determining the rate applicable to the additional authorized shares.
  - c. For the purposes of this subsection, shares without par value are considered worth one dollar per share.
  - d. ~~The minimum sum of fifty dollars must be paid for authorized shares at the time of filing articles of incorporation.~~

- e. A corporation increasing authorized shares by articles of amendment or articles of merger must have previously paid for a minimum of fifty thousand dollars of authorized shares.
  - (1) Thereafter, a corporation may postpone the payment for any additional amount until the filing of an annual report after the unpaid shares are issued.
  - (2) Any additional amount must be paid in increments of ten thousand dollars of authorized shares.
- f. The provisions of this subsection do not apply to a building and loan or savings and loan association.

~~31.~~ License fee of eighty-five dollars from each foreign corporation at the time of filing an application for a certificate of authority to transact business in this state. Thereafter, the secretary of state shall fix the license fee for each foreign corporation as follows:

- a. The secretary of state shall first ascertain the license fee which a newly organized corporation would be required to pay if it had authorized shares of the same kind and amount as the issued or allotted shares of the reporting foreign corporation shown by its filed annual report.
- b. Said amount must be multiplied by a fraction, the numerator of which must be the sum of the value of the property of the foreign corporation located in this state and the gross receipts of the foreign corporation derived from that foreign corporation's business transacted within this state, and the denominator of which must be the sum of the value of all of that foreign corporation's property wherever located and the gross receipts of the foreign corporation derived from that foreign corporation's business wherever transacted. The amounts used in determining the numerator and denominator must be determined from the foreign corporation's filed annual report.
- e. From the product of such multiplication, there must be deducted the aggregate amount of license fee previously paid by the foreign corporation, and the remainder, if any, must be the amount of additional fee to be paid by the foreign corporation.

The secretary of state shall enter the amount of any additional license fee in the records of the foreign corporation in the secretary of state's office and shall mail a notice of the amount of additional license fee due to the foreign corporation at the foreign corporation's principal office. The additional license fee must be paid by the foreign corporation before the annual report may be filed by the secretary of state. Amounts less than five dollars are not collected.

~~32.~~ 27. Any record submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the record.

~~33.~~ 28. Filing any other statement of a corporation or foreign corporation, ten dollars.

<sup>41</sup> **SECTION 27. AMENDMENT.** Subsection 1 of section 10-32-07 of the North Dakota Century Code is amended and reenacted as follows:

1. The articles of organization must contain:
  - a. The name of the limited liability company;
  - b. The address name of the registered office agent of the limited liability company as provided in chapter 10-01.1 and the name of the limited liability company's registered agent at that address, if a noncommercial registered agent, then the address of such noncommercial registered agent in this state;
  - c. The name and address of each organizer;
  - d. The effective date of organization:
    - (1) If a later date than that on which the certificate of organization is issued by the secretary of state; and
    - (2) Which may not be later than ninety days after the date on which the certificate of organization is issued; and
  - e. If the articles of organization are filed with the secretary of state:
    - (1) Before July 1, 1999, a statement stating in years that the period of existence for the limited liability company must be a period of thirty years from the date the articles of organization are filed with the secretary of state, unless the articles of organization expressly authorize a shorter or longer period of duration, which may be perpetual.
    - (2) After June 30, 1999, a statement stating in years the period of existence of the limited liability company, if other than perpetual.

**SECTION 28. AMENDMENT.** Section 10-32-12 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-12. Registered office and agent.**

- ~~1. A As provided by chapter 10-01.1, a limited liability company shall continuously maintain a registered office agent in this state. A registered office need not be the same as the principal place of business or the principal executive office of the limited liability company.~~
- ~~2. A limited liability company shall appoint and continuously maintain a registered agent. The registered agent may be an individual residing in this state, a corporation or a limited liability company, or a foreign corporation or foreign limited liability company authorized to transact~~

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<sup>41</sup> Section 10-32-07 was also amended by section 40 of House Bill No. 1241, chapter 101.

business in this state. The registered agent must 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 with the secretary of state, together with the fees provided in section 10-32-150.

**SECTION 29. AMENDMENT.** Section 10-32-13 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-13. Change of registered office or agent.** As provided in chapter 10-01.1:

1. A limited liability company may change its registered office, change its registered agent, or state a change in the name of its registered agent, by filing with the secretary of state, along with the fees provided in section 10-32-150, a statement containing:
  - a. The name of the limited liability company;
  - b. If the address of its registered office is to be changed, the new address of its registered office;
  - c. If its registered agent is to be designated or changed, the name of its new registered agent;
  - d. If the name of its registered agent is to be changed, the name of its registered agent as changed;
  - e. 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; and
  - f. A statement that the change of registered office or registered agent was authorized by resolution approved by the board.; and
2. A registered agent of a limited liability company 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 limited liability company at its principal executive office or to a legal representative of the limited liability company. The appointment of the agent terminates thirty days after the notice is filed with the secretary of state.
3. If the business address or 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 limited liability company represented by that agent by filing with the secretary of state a statement for each limited liability company as required in subsection 1, except that it need be signed only by the registered agent, need not be responsive to subdivision f of subsection 1, and must state that a copy of the statement has been mailed to each of those limited liability companies or to the legal representative of each of those limited liability companies.
4. The fee provided in section 10-32-150 for change of address of registered office must be refunded when the secretary of state

~~determines a change of address of registered office results from rezoning or postal reassignment.~~

<sup>42</sup> **SECTION 30. AMENDMENT.** Subsection 4 of section 10-32-107 of the North Dakota Century Code is amended and reenacted as follows:

4. If the surviving organization in a merger will be a foreign corporation or foreign limited liability company and will transact business in this state, the surviving organization shall comply, as the case may be, with the provisions of chapter 10-19.1 with respect to foreign corporations or with the provisions of this chapter with respect to foreign limited liability companies. In every case, the surviving foreign corporation or foreign limited liability company shall file with the secretary of state:
  - a. An agreement that the surviving organization may be served with process in this state in a proceeding for the enforcement of an obligation of a constituent organization and in a proceeding for the enforcement of the rights of a dissenting owner of an ownership interest of a constituent organization against the surviving foreign corporation or foreign limited liability company;
  - b. An irrevocable appointment of the secretary of state as the surviving organization's agent to accept service of process in any proceeding, and an address to which process may be forwarded as provided in section 10-01.1-13; and
  - c. An agreement that the surviving organization promptly will pay to the dissenting owners of ownership interests of each constituent limited liability company and constituent corporation the amount, if any, to which the dissenting owners are entitled under section 10-19.1-88 or 10-32-55.

**SECTION 31. AMENDMENT.** Subsection 5 of section 10-32-108.6 of the North Dakota Century Code is amended and reenacted as follows:

5. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection as provided in section 10-01.1-13.

**SECTION 32. AMENDMENT.** Subsection 1 of section 10-32-122 of the North Dakota Century Code is amended and reenacted as follows:

1. A limited liability company may be involuntarily dissolved, wound up, and terminated 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 of organization were procured through fraud;

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<sup>42</sup> Section 10-32-107 was also amended by section 57 of House Bill No. 1241, chapter 101.



- b. The limited liability company was organized for a purpose not permitted by section 10-32-04;
- c. The limited liability company failed to comply with the requirements essential to organization under this chapter;
- d. The limited liability company has failed for thirty days to appoint and maintain a registered agent in this state as provided in chapter 10-01.1;
- e. The limited liability company has failed for thirty days after change of the registered office or registered agent to file in the office of the secretary of state a statement of such change as provided in chapter 10-01.1; or
- f. The limited liability company has acted, or failed to act, in a manner that constitutes surrender or abandonment of the limited liability company privileges or enterprise.

**SECTION 33. AMENDMENT.** Section 10-32-132 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-132. Service of process on limited liability company, foreign limited liability company, and nonresident governors.**

- 1. ~~The registered agent must be an agent of the limited liability company or foreign limited liability company and any nonresident governor upon whom any~~ Any process, notice, or demand required or permitted by law to be served on the limited liability company, the foreign limited liability company, or a governor may be served as provided in section 10-01.1-13.
  - a. ~~When a foreign limited liability company transacts business with a certificate of authority, or when the certificate of authority of a foreign limited liability company is suspended or revoked, the secretary of state is an agent of the foreign limited liability company for service of process, notice, or demand.~~
  - b. ~~Acceptance of a governorship 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 limited liability company or foreign limited liability company may be served:~~
  - a. ~~On the registered agent of the limited liability company or foreign limited liability company;~~
  - b. ~~On a manager of the limited liability company or foreign limited liability company;~~
  - c. ~~On any responsible person found at the registered office or at the principal executive office if located in this state; or~~
  - d. ~~On the secretary of state as provided in this section.~~

3. If neither the registered agent nor a responsible person can be found at the registered office or the principal executive office if located in this state, or if a limited liability company or foreign limited liability company fails to maintain a registered agent in this state, then the secretary of state is an agent of the limited liability company or foreign limited liability company upon whom the process, notice, or demand may be served.
  - a. Service on the secretary of state:
    - (1) Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication;
    - (2) Shall include the return of the sheriff, or the affidavit of a person not a party, verifying that neither the registered agent nor a responsible person can be found at the registered office or at the principal executive office;
    - (3) Is deemed personal service upon the limited liability company or foreign limited liability company and must be made by filing with the secretary of state:
      - (a) Three copies of the process, notice, or demand; and
      - (b) The fees provided for in section 10-32-150; and
    - (4) Is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.
  - b. The secretary of state shall immediately forward, by registered mail, addressed to the limited liability company at its registered office or principal executive office, a copy of the process, notice, or demand.
4. Process, notice, or demand may be served on a dissolved limited liability company as provided in this subsection. The court shall determine if service is proper. If a limited liability company has voluntarily dissolved or a court has entered a decree of dissolution, service may be made according to subsection 2 so long as claims are not finally barred under section 10-32-128. If a limited liability company has been involuntarily dissolved pursuant to section 10-32-140, then service may be made according to subsection 2.
5. The secretary of state shall maintain a record of every process, notice, and demand served upon the secretary of state under this section, including the date of service and the action taken with reference to the process, notice, or demand.
6. Nothing in this section limits the right of a person to serve any process, notice, or demand required or permitted by law to be served upon a limited liability company or foreign limited liability company in any other manner permitted by law.

**SECTION 34. AMENDMENT.** Section 10-32-138 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-138. Foreign limited liability company - Application for certificate of authority.**

1. An applicant for the certificate shall file with the secretary of state a certificate of status from the filing office in the jurisdiction in which the foreign limited liability company is organized and an application executed by an authorized person and setting forth:
  - a. The name of the foreign limited liability company and, if different, the name under which it proposes to transact business in this state;
  - b. The jurisdiction of its organization;
  - c. The name of the ~~proposed~~ registered agent in this state, ~~which agent must be as defined in section 10-32-12 as required by chapter 10-01.1 and, if a noncommercial registered agent, then the address of such noncommercial registered agent in this state;~~
  - d. ~~The address of the proposed registered office of the foreign limited liability company in this state;~~
  - e. The date the foreign limited liability company expires in the jurisdiction of its organization;
  - f. ~~e.~~ The purpose the foreign limited liability company proposes to pursue in transacting its business in this state;
  - g. ~~f.~~ The names and addresses of the governors and managers of the foreign limited liability company; and
  - h. ~~g.~~ Any additional information deemed appropriate by the secretary of state to determine whether the foreign limited liability company is entitled to a certificate of authority to transact business in this state.
2. The application must be accompanied by payment of the fees provided in section 10-32-150 together with a certificate of good standing or a certificate of existence duly authenticated by the organizing officer of the state or country where the foreign limited liability company is organized ~~and the consent of the designated registered agent for service of process to serve in that capacity.~~

**SECTION 35. AMENDMENT.** Subsection 2 of section 10-32-139 of the North Dakota Century Code is amended and reenacted as follows:

2. File the application; and the certificate of good standing or certificate of existence; ~~and the consent of the registered agent;~~ and

**SECTION 36. AMENDMENT.** Section 10-32-141 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-141. Foreign limited liability company - Registered agent and certain reports - Registered office.** A foreign limited liability company authorized to transact business in this state shall:

1. ~~Appoint and continuously maintain a registered agent in the same manner and registered office in this state as provided in section 10-32-12; and~~
2. ~~File a report upon any change in the address of the registered office or upon any change in the name of its registered agent in the same manner as provided in subsection 3 of section 10-32-13 chapter 10-01.1.~~

**SECTION 37. AMENDMENT.** Subsection 1 of section 10-32-143 of the North Dakota Century Code is amended and reenacted as follows:

1. A foreign limited liability company 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 the certificate, the foreign limited liability company shall file with the secretary of state an application for withdrawal, together with the fees provided in section 10-32-150, which must set forth:
  - a. The name of the foreign limited liability company and the state or country under the laws of which it is organized;
  - b. That the foreign limited liability company is not transacting business in this state;
  - c. That the foreign limited liability company surrenders its authority to transact business in this state;
  - d. That ~~the foreign limited liability company revokes the authority of its registered agent in this state to accept service of process and consents to that service of process on the foreign limited liability company by service upon the secretary of state in any action, suit, or proceeding based upon any cause of action arising in this state during the time the foreign limited liability company was authorized to transact business in this state may thereafter be made on such foreign limited liability company as provided in section 10-01.1-13; and~~
  - e. A post-office address to which a person may mail a copy of any process against the foreign limited liability company.

**SECTION 38. AMENDMENT.** Section 10-32-144 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-144. Foreign limited liability company - Revocation of certificate of authority.**

1. The certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the secretary of state ~~upon the occurrence of either of these events if:~~
  - a. The foreign limited liability company has failed to ~~appoint:~~
    - (1) Appoint and maintain a registered agent and registered office as required by this provided in chapter; file a report

~~upon any change in the name or business address of the registered agent, 10-01.1; or file~~

- (2) File in the office of the secretary of state any amendment to its application for a certificate of authority as specified in section 10-32-140; or
- b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the foreign limited liability company pursuant to this chapter.
2. ~~No~~ Except for revocation of the certificate of authority for failure to file the annual report as provided in section 10-32-149, no certificate of authority of a foreign limited liability company may be revoked by the secretary of state unless:
- a. The secretary has given the foreign limited liability company not less than sixty days' notice by mail addressed to its registered agent at the registered office in this state or, if the foreign limited liability company fails to appoint and maintain a registered agent in this state, addressed to its principal executive office; and
- b. During the sixty-day period, the foreign limited liability company has failed to file:
- (1) File the report of change as provided in chapter 10-01.1 regarding the registered office or the registered agent, to file;
- (2) File any amendment; ~~to correct~~
- (3) Correct the misrepresentation.
3. Upon the expiration of sixty days after the mailing of the notice, the authority of the foreign limited liability company to transact business in this state ceases. The secretary of state shall issue a certificate notice of revocation and shall mail the certificate notice to the principal executive office of the foreign limited liability company.

**SECTION 39. AMENDMENT.** Section 10-32-148 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-148. Service of process on a foreign limited liability company.**

Service of process on a foreign limited liability company must be as provided in section ~~10-32-132~~ 10-01.1-13.

**SECTION 40. AMENDMENT.** Section 10-32-149 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-149. Secretary of state - Annual report of limited liability company and foreign limited liability company.**

1. Each limited liability company, and each foreign limited liability company authorized to transact business in this state, shall file, within the time provided by subsection 3, an annual report setting forth:

- a. The name of the limited liability company or foreign limited liability company and the state or country under the laws of which it is organized.
  - b. The address of the registered office of the limited liability company or foreign limited liability company in this state, the name of its registered agent in this state at that address, and the address of its principal executive office.
  - c. A brief statement of the character of the business in which the limited liability company or foreign limited liability company is actually engaged in this state.
  - d. The names and respective addresses of the managers and governors of the limited liability company or foreign limited liability company or the name or names and respective address or addresses of the managing member or members of the limited liability company or foreign limited liability company.
2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as provided in subsection 56 of section 10-32-02, the articles, the bylaws, or a resolution approved by the affirmative vote of the required proportion or number of the governors or members entitled to vote. If the limited liability company or foreign limited liability company is in the hands of a receiver or trustee, the annual report must be signed on behalf of the limited liability company or foreign limited liability company by the receiver or trustee. The secretary of state may destroy any annual report provided for in this section after the annual report is on file for six years.
  3. The annual report of a limited liability company or foreign limited liability company must be delivered to the secretary of state before November sixteenth of each year, except that the first annual report of a limited liability company or foreign limited liability company must be delivered before November sixteenth of the year following the calendar year in which the certificate of organization or certificate of authority was issued by the secretary of state.
    - a. An annual report in a sealed envelope postmarked by the United States postal service before November sixteenth, or an annual report in a sealed packet with a verified shipment date by any other carrier service before November sixteenth, is in compliance with this requirement.
    - b. The secretary of state must file the report if the report conforms to the requirements of subsection 2.
      - (1) If the report does not conform, it must be returned to the limited liability company or foreign limited liability company for any necessary corrections.
      - (2) If the report is filed before the deadlines provided in this subsection, penalties for the failure to file a report within the time provided do not apply if the report is corrected to

conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.

- c. The secretary of state may extend the annual filing date of any limited liability company or foreign limited liability company, if a written application for an extension is delivered before November sixteenth.
4. After the date established under subsection 3, the secretary of state shall notify any limited liability company or foreign limited liability company failing to file its annual report that its certificate of organization or certificate of authority is not in good standing and that it may be terminated or revoked pursuant to subsection 5.
    - a. The secretary of state must mail notice of termination or revocation to the last registered agent at the last registered office ~~of record~~.
    - b. If the limited liability company or foreign limited liability company files its annual report after the notice is mailed, together with the annual report filing fee and late filing penalty fee as provided by section 10-32-150, the secretary of state will restore its certificate of organization or certificate of authority to good standing.
  5. A limited liability company that does not file its annual report, along with the statutory filing and penalty fees, within six months after the date established in subsection 3, ceases to exist and is considered involuntarily terminated by operation of law.
    - a. The secretary of state shall note the termination of the limited liability company's certificate of organization on the records of the secretary of state and shall give notice of the action to the terminated limited liability company.
    - b. Notice by the secretary of state must be mailed to the foreign limited liability company's last registered agent at the last registered office ~~of record~~.
  6. A foreign limited liability company that does not file its annual report, along with the statutory filing and penalty fees, within six months after the date established by subsection 3, forfeits its authority to transact business in this state.
    - a. The secretary of state shall note the revocation of the foreign limited liability company's certificate of authority on the records of the secretary of state and shall give notice of the action to the foreign limited liability company.
    - b. Notice by the secretary of state must be mailed to the foreign limited liability company's last registered agent at the last registered office ~~of record~~.
    - c. The secretary of state's decision that a certificate of authority must be revoked under this subsection is final.

7. A limited liability company that was terminated for failure to file an annual report, or a foreign limited liability company whose authority was forfeited by failure to file an annual report, may be reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report and a reinstatement fee as provided in section 10-32-150. The fees must be paid and the report filed within one year following the involuntary dissolution or revocation. Reinstatement under this subsection does not affect the rights or liability for the time from the termination or revocation to the reinstatement.

**SECTION 41. AMENDMENT.** Section 10-32-150 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-150. Secretary of state - Fees and charges.** The secretary of state shall charge and collect for:

1. Filing articles of organization and issuing a certificate of organization, one hundred ~~twenty-five~~ thirty-five dollars.
2. Filing articles of amendment, fifty dollars.
3. Filing articles of correction, fifty dollars.
4. Filing restated articles of organization, one hundred twenty-five dollars.
5. Filing articles of conversion of a limited liability company, fifty dollars and:
  - a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
  - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
6. Filing abandonment of conversion, fifty dollars.
7. Filing articles of merger and issuing a certificate of merger, fifty dollars.
8. Filing abandonment of merger or exchange, fifty dollars.
9. Filing an application to reserve a name, ten dollars.
10. Filing a notice of transfer of a reserved name, ten dollars.
11. Filing a cancellation of reserved name, ten dollars.
12. Filing a consent to use of name, ten dollars.
13. Filing a statement of change of address of registered office or change of registered agent or both, ~~ten dollars~~.



- ~~14.~~ 14. Filing or a statement of change of address of registered office by registered agent, ~~ten dollars for each limited liability company affected by such change~~ the fee provided in section 10-01.1-03.
- ~~15.~~ Filing a registered agent's consent to serve in such capacity, ten dollars.
- ~~16.~~ Filing a resignation as registered agent, ten dollars.
- ~~17.~~ 14. Filing a resolution for the establishment of a class or series of membership interests, fifty dollars.
- ~~18.~~ 15. Filing a notice of dissolution, ten dollars.
- ~~19.~~ 16. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
- ~~20.~~ 17. Filing articles of dissolution and termination, twenty dollars.
- ~~21.~~ 18. Filing an application of a foreign limited liability company for a certificate of authority to transact business in this state and issuing a certificate of authority, one hundred ~~twenty-five~~ thirty-five dollars.
- ~~22.~~ 19. Filing an amendment to the certificate of authority by a foreign limited liability company, fifty dollars.
- ~~23.~~ 20. Filing a certificate of fact stating a merger of a foreign limited liability company holding a certificate of authority to transact business in this state, fifty dollars.
- ~~24.~~ 21. Filing a certified statement of conversion of a foreign limited liability company, fifty dollars.
- ~~25.~~ 22. Filing an application for withdrawal of a foreign limited liability company and issuing a certificate of withdrawal, twenty dollars.
- ~~26.~~ 23. Filing an annual report of a limited liability company or foreign limited liability company, fifty dollars.
- a. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
- (1) After the date provided in subsection 3 of section 10-32-149, fifty dollars; and
  - (2) After the termination of the limited liability company, or the revocation of the certificate of authority of a foreign limited liability company, the reinstatement fee of one hundred twenty-five dollars.
- b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-32-149, or the annual report lacks sufficient payment as required by this subsection.

- ~~27.~~ 24. Filing any process, notice, or demand for service, ~~twenty five dollars~~ the fee provided in section 10-01.1-03.
- ~~28.~~ 25. Submitting any record for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the record.
- ~~29.~~ 26. Filing any other statement or report of a limited liability company or foreign limited liability company, ten dollars.
- ~~30.~~ 27. Furnishing a copy of any record, or paper relating to a limited liability company or a foreign limited liability company:
- a. One dollar for every four pages, or fraction thereof; and
  - b. Five dollars for a search of records.
- ~~34.~~ 28. Furnishing a certificate of good standing, existence, or authorization:
- a. Fifteen dollars; and
  - b. Five dollars for a search of records.
- ~~32.~~ 29. Each page of any record or form sent by electronic transmission, one dollar.

<sup>43</sup> **SECTION 42. AMENDMENT.** Subsection 1 of section 10-33-06 of the North Dakota Century Code is amended and reenacted as follows:

1. The articles of incorporation must contain:
  - a. The name of the corporation;
  - b. The address name of the registered office agent of the corporation as provided in chapter 10-01.1 and the name of its, if a noncommercial registered agent at that, then the address of that noncommercial registered agent in this state;
  - c. The name and address of each incorporator;
  - d. The effective date of the incorporation:
    - (1) If a later date than that on which the certificate of incorporation is issued by the secretary of state; and
    - (2) Which may not be later than ninety days after the date on which the certificate of incorporation is issued; and
  - e. A statement that the corporation is incorporated under this chapter.

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<sup>43</sup> Section 10-33-06 was also amended by section 61 of House Bill No. 1241, chapter 101.

**SECTION 43. AMENDMENT.** Section 10-33-12 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-12. Registered office - Registered agent.**

4. A corporation shall continuously maintain a registered office agent in this state as provided by chapter 10-01.1, and if a noncommercial registered agent, then the address of the noncommercial registered agent 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 appoint and continuously maintain a registered agent. The registered agent may be an individual residing in this state, another corporation whether incorporated under this chapter or under another chapter of this code, a limited liability company, a foreign corporation whether authorized to do business or conduct activities in the state under this chapter or under another provision of this code, or foreign limited liability company authorized to conduct activities 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 that capacity must be filed with the secretary of state, together with the fees provided in section 10-33-140.

**SECTION 44. AMENDMENT.** Section 10-33-13 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-13. Establishment or change Change of registered office - Appointment or change of registered agent - Change of name of registered agent.**

1. A corporation may ~~establish or change its registered office, designate or change its registered agent, or state a change in the name of its registered agent by filing with the secretary of state, along with the fees provided in section 10-33-140, a statement containing:~~
  - a. ~~The name of the corporation.~~
  - b. ~~The new address of its registered office if the address of its registered office is to be established or changed as provided in chapter 10-01.1.~~
  - e. ~~The name of its new registered agent if its registered agent is to be designated or changed.~~
  - d. ~~The name of its registered agent as changed if the name of its registered agent is to be changed.~~
  - e. ~~A statement that the address of its registered office and the address of the business office of its registered agent, as established or changed, will be identical.~~
  - f. ~~A statement that the establishment or change of registered office or designation or change of registered agent is authorized by resolution approved by the board as provided in chapter 10-01.1.~~

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 as provided in chapter 10-01.1.
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 of each corporation represented by that agent by filing with the secretary of state a statement for each corporation as required in subsection 4, except that it need be signed only by the registered agent, need not be responsive to subdivision f, 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.
4. With respect to fees:
  - a. The fee provided in section ~~10-33-140~~ for change of registered office must be refunded if in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment.
  - b. The fees provided in section ~~10-33-140~~ 10-01.1-03 for change of registered agent, and change of registered office, and ~~consent of registered agent~~ do not apply if the registered agent or registered office is established or changed in the annual report.

**SECTION 45. AMENDMENT.** Subsection 4 of section 10-33-92 of the North Dakota Century Code is amended and reenacted as follows:

4. If the single corporation will be a foreign corporation and will conduct activities in this state, then it shall comply with the provisions of sections 10-33-125 through 10-33-138 with respect to foreign corporations. In every case the single 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
  - 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 as provided in section 10-01.1-13.

**SECTION 46. AMENDMENT.** Subsection 1 of section 10-33-107 of the North Dakota Century Code is amended and reenacted as follows:

1. A court may grant equitable relief it considers just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and activities:
  - a. In a supervised voluntary dissolution under section 10-33-106.

- b. In an action by a director or at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less, 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, the members cannot break the deadlock, and the corporation or the parties have not provided for a procedure to resolve the dispute;
  - (2) The directors or those in control of the corporation have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members, directors, or officers;
  - (3) The members 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 10-33-118.
- c. In an action by a creditor when:
  - (1) The claim of the creditor has been reduced to judgment and an execution on it 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 cannot pay its debts in the ordinary course of its activities.
- d. In an action by the attorney general when it is established that:
  - (1) The articles and certificate of incorporation were obtained through fraud;
  - (2) The corporation should not have been formed under this chapter;
  - (3) The corporation failed to comply with the requirements of sections 10-33-02 through 10-33-19 essential to incorporation under or election to become governed by this chapter;
  - (4) The corporation has flagrantly violated a provision of this chapter, has violated a provision of this chapter more than once, or has violated more than one provision of this chapter;

- (5) The corporation has engaged in an unauthorized act, contract, conveyance, or transfer or has exceeded its powers;
  - (6) The corporation has acted, or failed to act, in a manner that constitutes surrender or abandonment of the corporate purpose, franchise, privileges, or enterprise;
  - (7) The corporation has liabilities and obligations exceeding the corporate assets;
  - (8) The period of corporate existence has ended without extension;
  - (9) The corporation has failed for a period of ninety days to pay fees, charges, or penalties required by this chapter;
  - (10) The corporation has failed for a period of thirty days:
    - (a) To appoint and maintain a registered agent in this state as provided in chapter 10-01.1; or
    - (b) After changing its registered office, to file with the secretary of state a statement of the change as provided in chapter 10-01.1;
  - (11) The corporation has answered falsely or failed to answer a reasonable written interrogatory from the secretary of state or the attorney general to the corporation, its officers, or directors;
  - (12) The corporation has solicited property and has failed to use it for the purpose solicited; or
  - (13) The corporation has fraudulently used or solicited property.
- e. An action may not be commenced under subdivision d 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.

**SECTION 47. AMENDMENT.** Section 10-33-120 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-120. Service of process on corporation, foreign corporation, and nonresident directors.**

4. ~~The registered agent must be an agent of the corporation or foreign corporation, and any nonresident director upon whom any~~ Any process, notice, or demand required or permitted by law to be served on the corporation, the foreign corporation, or a director may be served as provided in section 10-01.1-13.

- a. When a foreign corporation transacts business without a certificate of authority, or when the certificate of authority of a foreign corporation is suspended or revoked, the secretary of state is an agent of the foreign corporation for service of process, notice, or demand.
  - b. 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 or foreign corporation may be served:
- a. On the registered agent of the corporation or foreign corporation;
  - b. On an officer of the corporation or foreign corporation;
  - c. On any responsible person found at the registered office or at the principal executive office if located in this state; or
  - d. On the secretary of state as provided in this section.
3. If neither the registered agent nor a responsible person can be found at the registered office, or if a responsible person cannot be found at the principal executive office if located in this state, then the secretary of state is an agent of the corporation upon whom the process, notice, or demand may be served.
- a. Service on the secretary of state:
    - (1) Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication;
    - (2) Shall include the return of the sheriff, or the affidavit of an individual who is not a party, verifying that neither the registered agent nor a responsible person can be found at the registered office or at the principal executive office if located in this state;
    - (3) Is deemed personal service upon the corporation or foreign corporation and must be made by filing with the secretary of state:
      - (a) Three copies of the process, notice, or demand; and
      - (b) The fees provided in section 10-33-140; and
    - (4) Is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.
  - b. The secretary of state shall immediately forward, by registered mail, addressed to the corporation or foreign corporation at its registered office, a copy of the process, notice, or demand.
4. Process, notice, or demand may be served on a dissolved corporation as provided in this subsection. The court shall determine if service is

proper. If a corporation has voluntarily dissolved or a court has entered a decree of dissolution, service may be made according to subsection 2 as long as claims are not finally barred under section 10-33-115. If a corporation has been involuntarily dissolved pursuant to section 10-33-139, service may be made according to subsection 2.

5. The secretary of state shall maintain a record of every process, notice, and demand served on the secretary of state under this section, including the date of service and the action taken with reference to the process, notice, or demand.
6. This section does not limit the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation or foreign corporation in any other manner permitted by law.

**SECTION 48. AMENDMENT.** Section 10-33-128 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-128. Foreign corporation application for certificate of authority.**

1. An applicant for the certificate shall file with the secretary of state a certificate of status from the filing office in the jurisdiction in which the foreign corporation is incorporated and an application executed by an authorized person and setting forth:
  - a. The name of the foreign corporation and, if different, the name under which it proposes to conduct activities in this state;
  - b. The jurisdiction of its incorporation;
  - c. The date of incorporation in the jurisdiction of its incorporation and the period of duration of the foreign corporation;
  - d. The address of the principal executive office of the foreign corporation in the jurisdiction where it is incorporated;
  - e. The address name of the proposed registered office agent of the foreign corporation in this state;
  - f. The name as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of the proposed that noncommercial registered agent in this state that is:
    - (1) An individual resident of this state;
    - (2) A corporation whether incorporated under this chapter or under another provision of this code; or
    - (3) A foreign corporation having a place of activity in, and authorized to conduct activities in, this state whether authorized to conduct activities in this state under this chapter or under another provision of this code;
  - g. f. The purpose or purposes of the foreign corporation which it proposes to pursue in conducting its activities in this state;



- ~~h.~~ g. The names and addresses of the directors and officers of the foreign corporation; and
  - ~~i.~~ h. Any additional information deemed necessary or appropriate by the secretary of state to enable the secretary of state to determine whether the foreign corporation is entitled to a certificate of authority to conduct activities in this state.
2. The application must be accompanied by payment of the fees provided in section 10-33-140 together with a certificate of good standing or a certificate of existence duly authenticated by the incorporating officer of the state or country where the corporation is incorporated ~~and the consent of the designated registered agent for service of process to serve in that capacity.~~

**SECTION 49. AMENDMENT.** Subsection 2 of section 10-33-129 of the North Dakota Century Code is amended and reenacted as follows:

2. File the application, ~~and~~ and the certificate of good standing or certificate of existence, ~~and the consent of the registered agent;~~ and

**SECTION 50. AMENDMENT.** Section 10-33-131 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-131. Foreign corporation - Registered agent - Registered office - Certain reports.** A foreign corporation authorized to conduct activities in this state ~~must:~~

- ~~1. Establish and shall~~ continuously maintain a registered agent and registered office in ~~the same manner~~ this state as provided in ~~section 10-33-12;~~
- ~~2. Appoint and continuously maintain a registered agent in the same manner as provided in section 10-33-12; and~~
- ~~3. File a report upon the establishment of or any change in the address of its registered office or upon the designation of or change in the name or address of its registered agent in the same manner as provided in section 10-33-13 chapter 10-01.1.~~

**SECTION 51. AMENDMENT.** Subsection 1 of section 10-33-133 of the North Dakota Century Code is amended and reenacted as follows:

1. A foreign corporation authorized to conduct activities in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure the certificate, the foreign corporation shall file with the secretary of state an application for withdrawal, together with the fees provided in section 10-33-140, which must set forth:
- a. The name of the corporation and the state or country under the laws of which it is incorporated;
  - b. That the corporation is not conducting activities in this state;

- c. That the corporation surrenders its authority to conduct activities in this state;
- d. ~~That the corporation revokes the authority of its registered agent in this state to accept service of process and consents to that service of process on the corporation by service upon the secretary of state in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to conduct activities in this state may thereafter be made on such corporation as provided in section 10-01.1-13; and~~
- e. A post-office address to which a person may mail a copy of any process against the corporation.

**SECTION 52. AMENDMENT.** Section 10-33-134 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-134. Foreign corporation - Revocation of certificate of authority.**

1. The certificate of authority of a foreign corporation to conduct activities in this state may be revoked by the secretary of state if:
  - a. The foreign corporation has failed to:
    - (1) ~~Maintain~~ Appoint and maintain a registered agent and registered office as required by this provided in chapter 10-01.1; or
    - (2) ~~Appoint and maintain~~ a registered agent as required by this chapter;
    - (3) ~~File a report upon any change in the address of its registered office;~~
    - (4) ~~File a report upon any change in the name or business address of the registered agent;~~ or
    - (5) ~~File~~ in the office of the secretary of state any amendment to its application for a certificate of authority as specified in section 10-33-130; or
  - b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the foreign corporation pursuant to this chapter.
2. ~~No~~ Except revocation of the certificate of authority for failure to file the annual report as provided in section 10-33-139, no certificate of authority of a foreign corporation may be revoked by the secretary of state unless:
  - a. The secretary has given the foreign corporation not less than sixty days' notice by mail addressed to its registered agent at the registered office in this state or, if the foreign corporation fails to appoint and maintain a registered agent in this state, then addressed to its principal executive office; and

- b. During the sixty-day period, the foreign corporation has failed to file:
  - (1) File the report of change as provided in chapter 10-01.1 regarding the registered office or the registered agent; ~~to file~~;
  - (2) File any amendment; ~~to correct~~
  - (3) Correct the misrepresentation.
3. Upon the expiration of sixty days after the mailing of the notice, the authority of the foreign corporation to conduct activities in this state ceases. The secretary of state shall issue a ~~certificate~~ notice of revocation and shall mail the ~~certificate~~ notice to the principal executive office of the foreign corporation.

**SECTION 53. AMENDMENT.** Section 10-33-138 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-138. Foreign corporation - Service of process.** Service of process on a foreign corporation must be as provided in section ~~10-33-120~~ 10-01.1-13.

**SECTION 54. AMENDMENT.** Section 10-33-139 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-139. Secretary of state - Annual report of corporations and foreign corporations.**

1. Each corporation, and each foreign corporation authorized to conduct activities in this state, shall file, within the time provided in subsection 3, an annual report setting forth:
  - a. The name of the corporation or foreign corporation and the state or country under the laws of which it is incorporated.
  - b. The address of the registered office of the corporation or foreign corporation in this state, the name of its registered agent in this state at that address, and the address of its principal executive office.
  - c. A brief statement of the character of the activities in which the corporation or foreign corporation is actually engaged in this state.
  - d. The names and respective addresses of the officers and directors of the corporation or foreign corporation.
  - e. The section of the Internal Revenue Code by which its tax status is established.
2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as provided in subsection 34 of section 10-33-01 or in the articles or bylaws, or in a resolution approved by the affirmative vote of the required proportion or number of the directors or members entitled to vote. If the corporation or foreign corporation is in the hands of a

receiver or trustee, it must be signed on behalf of the corporation or foreign corporation by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.

3. The annual report must be delivered to the secretary of state before February first of each year, except that the first annual report must be delivered before February first of the year following the calendar year in which the certificate of incorporation or certificate of authority was issued by the secretary of state.
  - a. An annual report in a sealed envelope postmarked by the United States postal service before February first, or an annual report in a sealed packet with a verified shipment date by any other carrier service before February first, complies with this requirement. When the filing date falls on a Saturday or holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day complies with this requirement.
  - b. The secretary of state must file the report if the report conforms to the requirements of subsection 2.
    - (1) If the report does not conform, it must be returned to the corporation for any necessary corrections.
    - (2) If the report is filed before the deadlines provided in this subsection, penalties for the failure to file a report within the time provided do not apply, if the report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.
  - c. The secretary of state may extend the annual filing date of any corporation or foreign corporation if a written application for an extension is delivered before February first.
4. After the date established under subsection 3, the secretary of state shall notify any corporation or foreign corporation failing to file its annual report that its certificate of incorporation or certificate of authority is not in good standing and that it may be dissolved or revoked pursuant to subsections 5 and 6. The secretary of state must mail the notice to the last registered agent at the last registered office of record. If the corporation or foreign corporation files its annual report after the notice is mailed, together with the annual report filing fee and late filing penalty fee as provided in section 10-33-140, the secretary of state shall restore its certificate of incorporation or certificate of authority to good standing.
5. A corporation that does not file its annual report, along with the statutory filing and penalty fees, within one year after the date established in subsection 3 ceases to exist and is considered involuntarily dissolved by operation of law.
  - a. Thereafter, the secretary of state shall note the termination 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.

- b. Notice by the secretary of state must be mailed to the last registered agent at the last registered office ~~of record~~.
6. A foreign corporation that does not file its annual report, along with the statutory filing and penalty fees, within one year after the date established by subsection 3 forfeits its authority to conduct activities in this state.
    - a. The secretary of state shall note the revocation of the foreign corporation's certificate of authority on the records of the secretary of state and shall give notice of the action to the foreign corporation.
    - b. Notice by the secretary of state must be mailed to the foreign corporation's last registered agent at the last registered office ~~of record~~.
    - c. The decision by the secretary of state that a certificate of authority must be revoked under this subsection is final.
  7. A corporation that was dissolved for failure to file an annual report, or a foreign corporation whose authority was forfeited by failure to file an annual report, may be reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report and a reinstatement fee as provided in section 10-33-140. The fees must be paid and the report filed within one year following the involuntary dissolution or revocation. Reinstatement under this subsection does not affect the rights or liability for the time from the dissolution or revocation to the reinstatement.
  8. The secretary of state may waive any penalties provided in this section when an annual report form could not be delivered to the corporation.

**SECTION 55. AMENDMENT.** Subsection 1 of section 10-33-140 of the North Dakota Century Code is amended and reenacted as follows:

1. The secretary of state shall charge and collect for:
  - a. Filing articles of incorporation and issuing a certificate of incorporation, ~~thirty~~ forty dollars.
  - b. Filing articles of amendment, twenty dollars.
  - c. Filing articles of correction, twenty dollars.
  - d. Filing restated articles of incorporation, thirty dollars.
  - e. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.
  - f. Filing an intent to dissolve, ten dollars.
  - g. Filing articles of dissolution, twenty dollars.
  - h. Filing a statement of change of address of registered office or change of registered agent, or both, ~~ten dollars~~.

- ~~i.~~ i. Filing a registered agent's consent to serve in that capacity, ten dollars.
- ~~j.~~ j. Filing a resignation as registered agent, ten dollars the fee provided in section 10-01.1-03.
- ~~k.~~ i. Filing an application to reserve a corporate name, ten dollars.
- ~~l.~~ j. Filing a notice of transfer of a reserved corporate name, ten dollars.
- ~~m.~~ k. Filing a cancellation of reserved corporate name, ten dollars.
- ~~n.~~ l. Filing a consent to use of a deceptively similar name, ten dollars.
- ~~o.~~ m. Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, ~~forty~~ fifty dollars.
- ~~p.~~ n. Filing an application of a foreign corporation for an amended certificate of authority, forty dollars.
- ~~q.~~ o. Filing a certified statement of merger of a foreign corporation holding a certificate of authority to conduct activities in this state, fifty dollars.
- ~~r.~~ p. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.
- ~~s.~~ q. Filing an annual report of a domestic or foreign corporation, ten dollars.
  - (1) The secretary of state shall charge and collect additional fees for late filing of the annual report:
    - (a) After the date provided in subsection 3 of section 10-33-139, five dollars; and
    - (b) After the dissolution of a corporation, or the revocation of the certificate of authority of a foreign corporation, the reinstatement fee of forty dollars.
  - (2) Fees paid to the secretary of state according to this subdivision are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-33-139, or the annual report lacks sufficient payment as required by this subdivision.
- ~~t.~~ r. Submitting any record for approval before the actual time of submission for filing, one-half of the fee provided in this subsection for filing the record.
- ~~u.~~ s. Filing any other statement of a domestic or foreign corporation, ten dollars.

**SECTION 56. AMENDMENT.** Section 10-34-04 of the North Dakota Century Code is amended and reenacted as follows:

**10-34-04. Compliance with title - Registered office and - Registered agent.**

1. A real estate investment trust may not do business in this state until it complies with this title.
2. Each real estate investment trust shall continuously maintain in this state:
  - a. ~~A a registered office, which need not be the same as the principal place of business or the principal executive office of the real estate investment trust.~~
  - b. ~~An agent for service of process on the real estate investment trust. The agent must be an individual resident of this state, a domestic corporation, a domestic limited liability company, a foreign corporation, or a foreign limited liability company authorized to do business agent as provided by chapter 10-01.1, and if a noncommercial registered agent, then the address of that noncommercial registered agent in this state.~~
3. A domestic or foreign real estate investment trust shall register with the secretary of state by submitting an application signed by a trustee which includes:
  - a. The name of the real estate investment trust which may not be the same or deceptively similar to the name of any other real estate investment trust registered with the secretary of state, or any corporation, limited liability company, limited partnership, limited liability partnership, or any name that is in some manner reserved with the secretary of state, that is a fictitious trade name registered ~~in the manner as provided in chapter 45-11, or that is a trade name registered in the manner as provided in chapter 47-25 unless there is filed with the secretary of state a written consent of the holder of the similar trade name to use the name proposed by the real estate investment trust. The name may not contain the word "corporation", "company", "incorporated", "limited liability company", or any abbreviation of these words.~~
  - b. The state and date of its formation.
  - c. The name, address, and principal place of business of each trustee and officer.
  - d. ~~The address name of its registered office and the name of its registered agent located at that office with the written consent of the as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of that noncommercial registered agent attached to the application in this state.~~
  - e. A statement that the secretary of state is appointed the agent of the real estate investment trust for service of process ~~if the registered agent's authority has been revoked or if the agent cannot be found~~

~~or served with the exercise of reasonable diligence as provided in section 10-01.1-13.~~

4. If the secretary of state finds that an application for registration of a real estate investment trust conforms to law and all fees have been paid, the secretary of state shall:
  - a. Endorse on the application the word "filed", and the month, day, and year of the filing.
  - b. File the application in the office of the secretary of state.
5. A real estate investment trust may change its registered office, change its registered agent, or state a change in the name of its registered agent by ~~filing with the secretary of state, along with the fees provided in this chapter, a statement containing:~~
  - a. ~~The name of the real estate investment trust.~~
  - b. ~~If the address of its registered office is to be changed, the new address of its registered office.~~
  - c. ~~If its registered agent is to be changed, the name of its new registered agent.~~
  - d. ~~If the name of its registered agent is to be changed, the name of its registered agent as changed.~~
  - e. ~~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.~~
  - f. ~~A statement that the change of registered office or registered agent was authorized by resolution approved by the real estate investment trust as provided in chapter 10-01.1.~~
6. A registered agent of a real estate investment trust 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 real estate investment trust at its principal executive office or to a legal representative of the real estate investment trust. The appointment of the agent terminates thirty days after the notice is filed with the secretary of state as provided in chapter 10-01.1.~~
7. 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 real estate investment trust represented by that agent by filing with the secretary of state a statement as required in subsection 5, except that it need be signed only by the registered agent, need not be responsive to subdivision f of subsection 5, and must state that a copy of the statement has been mailed to each of those real estate investment trusts or to the legal representative of each of those real estate investment trusts.~~
8. ~~The fee prescribed in this chapter for change of registered office must be refunded when in the secretary of state's opinion a change of~~



address of registered office results from rezoning or postal reassignment.

9. If any statement in the application was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the real estate investment trust shall file promptly with the secretary of state an application for an amended application executed by an authorized person correcting the statement.
40. 8. The secretary of state may revoke the registration of a domestic or foreign real estate investment trust for failure to maintain a registered office ~~and or a registered agent as required by this chapter and chapter 10-01.1.~~ Before revoking the registration, the secretary of state shall give not less than sixty days' notice by mail addressed to the last registered agent at the last registered office ~~and, or to the principal office of record of a foreign real estate investment trust of the deficiency.~~

**SECTION 57. AMENDMENT.** Section 10-34-06 of the North Dakota Century Code is amended and reenacted as follows:

**10-34-06. Service of process on real estate investment trust and nonresident trustees.**

1. ~~The registered agent must be an agent of the real estate investment trust and any nonresident trustee upon whom any~~ Any process, notice, or demand required or permitted by law to be served on the real estate investment trust or trustee may be served on the real estate investment trust and any nonresident trustee as provided in section 10-01.1-13. ~~Acceptance of a trusteeship 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 real estate investment trust may be served either upon the registered agent, or upon a trustee of the real estate investment trust, or upon the secretary of state as provided in this section.~~
3. ~~If neither the registered agent nor a trustee of the real estate investment trust can be found at the registered office, or if a real estate investment trust fails to maintain a registered agent in this state and a trustee cannot be found at the registered office, then the secretary of state is the agent 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 trustee 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 real estate investment trust and must be made by filing with the secretary of state an original and two copies of the process, notice, or demand. The secretary of state immediately shall forward, by registered mail, addressed to the real estate investment trust 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 real estate investment trust in any other manner permitted by law.

**SECTION 58. AMENDMENT.** Section 10-34-09 of the North Dakota Century Code is amended and reenacted as follows:

**10-34-09. Fees.** The secretary of state shall charge and collect the following fees with respect to real estate investment trusts:

1. Filing a registration of a real estate investment trust, one hundred ten dollars.
2. Filing a ~~registered agent's consent~~ or any amendment changing the registered agent or registered office, ~~ten dollars~~ the fee provided in section 10-01.1-03.
3. ~~Filing a resignation of a registered agent, ten dollars.~~
4. Filing a renewal or amendment of registration of a real estate investment trust, forty dollars.
5. ~~4.~~ Issuing a certificate of good standing, twenty-five dollars.

**SECTION 59. AMENDMENT.** Section 45-10.2-17 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-17. Registered office and ~~registered~~ - Registered agent.**

1. A limited partnership shall continuously maintain a registered ~~office agent~~ in this state as provided by chapter 10-01.1, and if a noncommercial registered agent, the address of that noncommercial registered agent. A ~~registered office need not be the same as the principal place of business or the principal executive office of the limited partnership.~~
2. The limited partnership shall appoint and continuously maintain a registered agent who may be:
  - a. An individual residing in this state;
  - b. A domestic corporation;
  - c. A domestic limited liability company; or
  - d. A foreign corporation or foreign limited liability company authorized to transact business in this state.
3. The registered agent shall maintain a business office identical to its registered office.

4. ~~Proof of the consent of the registered agent to serve in the capacity of registered agent must be filed with the secretary of state.~~

**SECTION 60. AMENDMENT.** Section 45-10.2-18 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-18. Change of registered office or agent - Resignation of registered agent - Change of name or address of registered agent.**

1. A limited partnership may change the its registered office of the limited partnership, change the its registered agent of the limited partnership, or state a change in the name of the registered agent of the limited partnership, by filing with the secretary of state a statement containing:
  - a. The name of the limited partnership;
  - b. The new address of the registered office of the limited partnership, if the address of the registered office of the limited partnership is to be changed;
  - c. The name of the new registered agent of the limited partnership, if the registered agent of the limited partnership is to be designated or changed;
  - d. The name of the registered agent of the limited partnership as changed, if the name of the registered agent of the limited partnership is to be changed;
  - e. A statement that the address of the registered office of the limited partnership and the address of the business office of the registered agent of the limited partnership, as changed, will be identical; and
  - f. A statement that the change of registered office or registered agent was authorized by resolution approved by the general partners as provided in chapter 10-01.1.
2. A registered agent of a limited partnership 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 was given to the limited partnership at the principal executive office of the limited partnership, or to a legal representative of the limited partnership. The appointment of the agent terminates thirty days after the notice is filed with the secretary of state as provided in chapter 10-01.1.
3. If the business address or 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 limited partnership represented by that agent by filing with the secretary of state a statement for each limited partnership as required in subsection 1, except that the statement need be signed only by the registered agent, need not be responsive to subdivision f of subsection 1, and must state that a copy of the statement was mailed to each of those limited partnerships or to the legal representative of each of those limited partnerships.

4. ~~The fee provided in section 45-10.2-109 for change of registered office must be refunded if in the opinion of the secretary of state a change of address of registered office results from rezoning or postal reassignment.~~

**SECTION 61. AMENDMENT.** Subsection 1 of section 45-10.2-23 of the North Dakota Century Code is amended and reenacted as follows:

1. In order for a limited partnership to be formed, a certificate of limited partnership must be filed with the secretary of state.
  - a. The certificate must state:
    - (1) The name of the limited partnership, which must comply with section 45-10.2-10;
    - (2) The general character of its business;
    - (3) The street address and mailing address of the principal executive office;
    - (4) The name, street address, and mailing address of each general partner;
    - (5) The name, street address, and mailing address of the registered agent in this state as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of that noncommercial registered agent in this state; and
    - (6) Any additional information required by sections 45-10.2-94 through 45-10.2-106.
  - b. A certificate of limited partnership may also contain any other matters but may not vary or otherwise affect the provisions specified in subsection 2 of section 45-10.2-12 in a manner inconsistent with that section.

**SECTION 62. AMENDMENT.** Section 45-10.2-79 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-79. (902) Foreign limited partnership - Application for certificate of authority.**

1. A foreign limited partnership may apply for a certificate of authority to transact business or conduct activities in this state by delivering an application to the secretary of state for filing. The application must state:
  - a. The name of the foreign limited partnership and, if the name does not comply with section 45-10.2-10, then an alternate name adopted pursuant to subsection 1 of section 45-10.2-77;
  - b. The name of the state or other jurisdiction under whose law the foreign limited partnership is organized;
  - c. The general character of the business the foreign limited partnership proposes to transact in this state;

- d. The street and mailing address of the principal executive office of the foreign limited partnership;
  - e. The name, ~~street address, and mailing address in this state~~ of the initial registered agent of the foreign limited partnership as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of that noncommercial registered agent in this state;
  - f. The name, street address, and mailing address of each general partner of the foreign limited partnership; and
  - g. Whether the foreign limited partnership is a foreign limited liability limited partnership.
2. ~~A With the completed application, the foreign limited partnership shall deliver with the completed application:~~
- a. ~~A~~ a certificate of existence or a record of similar import signed by the secretary of state or other official having custody of the publicly filed records of the foreign limited partnership in the state or other jurisdiction under whose law the foreign limited partnership is organized; ~~and~~
  - b. ~~Proof of the consent of the registered agent to serve in the capacity of registered agent.~~

**SECTION 63. AMENDMENT.** Subsection 2 of section 45-10.2-80 of the North Dakota Century Code is amended and reenacted as follows:

2. File the application, ~~and~~ the certificate of good standing or certificate of existence, ~~and the consent of the registered agent.~~

**SECTION 64. AMENDMENT.** Section 45-10.2-82 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-82. Foreign limited partnership - Registered agent - Registered office - ~~Certain reports.~~** A foreign limited partnership authorized to transact business in this state shall:

1. ~~Establish and~~ continuously maintain a registered office in the same manner as provided in ~~section 45-10.2-17~~;
2. ~~Appoint and~~ continuously maintain a registered agent in the same manner as provided in ~~section 45-10.2-17~~; and
3. ~~File a report upon any change in the address of its registered office or in the name or address of its registered agent in the same manner as provided in section 45-10.2-18~~ agent as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of that noncommercial registered agent in this state.

**SECTION 65. AMENDMENT.** Section 45-10.2-87 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-87. Foreign limited partnership - Revocation of certificate of authority.**

1. The certificate of authority of a foreign limited partnership to transact business in this state may be revoked by the secretary of state ~~upon the occurrence of either of these events if:~~
  - a. The foreign limited partnership has failed to:
    - (1) ~~Maintain~~ Appoint and maintain a registered office as required by this chapter agent as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of that noncommercial registered agent in this state;
    - (2) Maintain the registration of a general partner as required in section 45-10.2-16;
    - (3) File a report upon any change in the address of its principal executive office; or
    - (4) ~~Appoint and maintain~~ a registered agent as required by this chapter;
    - (5) ~~File a report upon any change in the name or business address of the registered agent;~~ or
    - (6) File in the office of the secretary of state any amendment to its application for certificate of authority as specified in section 45-10.2-81; or
  - b. A misrepresentation has been made of any material matter in an application, report, affidavit, or other record submitted by the foreign limited partnership pursuant to this chapter.
2. Except for ~~revocation of the certificate of authority for failure to file the annual report for which the certificate of authority may be revoked as provided in section 45-10.2-108~~ as provided in section 45-10.1-108, no certificate of authority may be revoked by the secretary of state unless:
  - a. The secretary has given the foreign limited partnership at least sixty days' notice by mail addressed to its registered agent at the registered office in this state or if the foreign limited partnership fails to appoint and maintain a registered agent in this state, then addressed to its principal executive office; and
  - b. During the sixty-day period, the foreign limited partnership has failed to file the report of change as provided in chapter 10-01.1 regarding the registered office or the registered agent, to register a general partner as required by section 45-10.2-16, to file any amendment, or to correct the misrepresentation.
3. Upon the expiration of sixty days after the mailing of the notice:
  - a. The authority of the foreign limited partnership to transact business in this state ceases; and

- b. The secretary of state shall issue a notice of revocation and shall mail the notice to the registered office of the foreign limited partnership, or if the foreign limited partnership has failed to maintain a registered office, then to its principal executive office.

**SECTION 66. AMENDMENT.** Section 45-10.2-107 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-107. Service of process on a limited partnership or foreign limited partnership and on nonresident general partners.**

1. ~~The registered agent must be an agent of the limited partnership, the foreign limited partnership, and any nonresident general partner upon whom any~~ Any process, notice, or demand required or permitted by law to be served on the limited partnership, foreign limited partnership, or general partner may be served as provided in section 10-01.1-13.
  - a. ~~When a foreign limited partnership transacts business without a certificate of authority or when the certificate of authority of a foreign limited partnership is suspended or revoked, the secretary of state is an agent of the foreign limited partnership for service of process, notice, or demand.~~
  - b. ~~Acceptance of a general partnership interest in a limited partnership or foreign limited partnership 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 on a limited partnership or foreign limited partnership may be served:
  - a. On the registered agent;
  - b. On a general partner of the limited partnership or foreign limited partnership;
  - c. On any responsible person found at the registered office or at the principal executive office if located in this state; or
  - d. On the secretary of state as provided in this section.
3. If neither the registered agent nor a responsible person can be found at the registered office and if a responsible person affiliated with the limited partnership or foreign limited partnership cannot be found at the principal place of business in this state, then the secretary of state is an agent of the limited partnership or foreign limited partnership on whom the process, notice, or demand may be served.
  - a. Service on the secretary of state:
    - (1) ~~Must be made by registered mail or personal delivery to the secretary of state and not by electronic communication.~~
    - (2) Must include the return of the sheriff or affidavit of a person not a party, verifying that neither a registered agent nor a

responsible person can be found at the registered office or at the principal place of business in this state.

- (3) Is deemed personal service on the limited partnership or foreign limited partnership and may be made by filing with the secretary of state:
  - (a) Three copies of the process, notice, or demand; and
  - (b) The fees provided in section 45-10.2-109.
- (4) Is returnable in not less than thirty days, notwithstanding a shorter period specified in the process, notice, or demand.

b. The secretary of state shall immediately forward, by registered mail addressed to the limited partnership or foreign limited partnership at its registered office or principal place of business in this state, a copy of the process, notice, or demand.

4. Process, notice, or demand may be served on a dissolved limited partnership as provided in this subsection. The court shall determine if service is proper.

a. If a limited partnership has voluntarily dissolved or a court has entered a decree of dissolution, then service may be made as provided in subsection 2 as long as claims are not finally barred under section 45-10.2-73.

b. If a limited partnership has been involuntarily dissolved by the secretary of state pursuant to section 45-10.2-108, then service may be made as provided in subsection 3.

5. The secretary of state shall maintain a record of every process, notice, and demand served on the secretary of state under this section, including the date of service and the action taken with reference to the process, notice, or demand.

6. This section does not limit the right of a person to serve process, notice, or demand required or permitted by law to be served on a limited partnership or foreign limited partnership in any other manner permitted by law.

**SECTION 67. AMENDMENT.** Section 45-10.2-108 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-108. Secretary of state - Annual report of limited partnership and foreign limited partnership.**

1. Each limited partnership, and each foreign limited partnership authorized to transact business in this state, shall file, within the time provided by subsection 3, an annual report setting forth:

a. The name of the limited partnership or foreign limited partnership and the jurisdiction of origin.



- b. The address of the registered office of the limited partnership or foreign limited partnership in this state and the name of the registered agent of the limited partnership or foreign limited partnership in this state at that address.
    - c. The address of the principal executive office of the limited partnership or foreign limited partnership.
    - d. A brief statement of the character of the business in which the limited partnership or foreign limited partnership is actually engaged in this state.
    - e. The name and respective address of every general partner of the limited partnership or foreign limited partnership.
  2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided in the annual report must be accurate as of the time of filing the report. The annual report must be signed as provided in subsection 40 of section 45-10.2-02 or a resolution approved by the affirmative vote of the required proportion or number of partners. If the limited partnership or foreign limited partnership is in the hands of a receiver or trustee, the annual report must be signed on behalf of the limited partnership or foreign limited partnership by the receiver or trustee. The secretary of state may destroy any annual reports provided for in this section after the annual report is on file for six years.
  3. The annual report of a limited partnership or foreign limited partnership must be delivered to the secretary of state before April first of each year, except the first annual report of a limited partnership or foreign limited partnership must be delivered before April first of the year following the calendar year in which the certificate of limited partnership or certificate of authority was filed by the secretary of state.
    - a. An annual report in a sealed envelope postmarked by the United States postal service on or before April first or an annual report in a sealed packet with a verified shipment date by any other carrier service on or before April first, complies with the delivery requirement under this subsection.
    - b. The secretary of state shall file the report if the report conforms to the requirements of subsection 2.
      - (1) If the report does not conform, then the report must be returned to the limited partnership or foreign limited partnership for any necessary corrections.
      - (2) If the report is filed before the deadlines provided in this subsection, then penalties for the failure to file a report within the time provided do not apply if the report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.
  4. After the date established under subsection 3, the secretary of state shall notify any limited partnership or foreign limited partnership failing

to file an annual report that the certificate of limited partnership or certificate of authority of a foreign limited partnership is not in good standing and that the certificate of the limited partnership or the certificate of authority of the foreign limited partnership may be dissolved or revoked pursuant to subsection 5.

- a. The secretary of state must mail notice of dissolution or revocation to the last registered agent at the last registered office ~~of record~~.
  - b. If the limited partnership or foreign limited partnership files an annual report after the notice is mailed, then the secretary of state will restore the certificate or certificate of authority of the limited partnership or foreign limited partnership to good standing.
5. A limited partnership that does not file an annual report, within six months after the date established in subsection 3, ceases to exist and is considered involuntarily dissolved by operation of law.
- a. The secretary of state shall note the dissolution of the certificate of limited partnership on the records of the secretary of state and shall give notice of the action to the dissolved limited partnership.
  - b. Notice by the secretary of state must be mailed to the last registered agent at the last registered office of ~~record~~ of the limited partnership.
6. A foreign limited partnership that does not file an annual report, within six months after the date established by subsection 3, forfeits the right to transact business in this state.
- a. The secretary of state shall note the revocation of the certificate of authority of the foreign limited partnership on the records of the secretary of state and shall give notice of the action to the foreign limited partnership.
  - b. Notice by the secretary of state must be mailed to the last registered agent at the last registered office of ~~record~~ of the foreign limited partnership.
7. A limited partnership that is dissolved for failure to file an annual report, or a certificate of authority of a foreign limited partnership that is forfeited for failure to file an annual report, may be reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report and a reinstatement fee as provided in section 45-10.2-109. The fees must be paid and the report filed within one year following the involuntary dissolution or revocation. Reinstatement under this subsection does not affect the rights or liability for the time from the dissolution or revocation to the reinstatement.

**SECTION 68. AMENDMENT.** Section 45-10.2-109 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-109. Secretary of state - Fees for filing records.** The secretary of state shall charge and collect for:

1. Filing a certificate of limited partnership, one hundred ten dollars.

2. Filing a limited partnership amendment, forty dollars.
3. Filing articles of conversion of a limited partnership, fifty dollars and:
  - a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
  - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
4. Filing abandonment of conversion, fifty dollars.
5. Filing limited partnership articles of merger, fifty dollars.
6. Filing abandonment of merger or exchange, fifty dollars.
7. Filing a limited partnership statement of correction, forty dollars.
8. Filing a limited partnership dissolution, twenty-five dollars.
9. Filing a limited partnership cancellation, twenty-five dollars.
10. Filing a reservation of name, ten dollars.
11. Filing a notice of transfer of a reserved limited partnership name, ten dollars.
12. Filing a cancellation of a reserved limited partnership name, ten dollars.
13. Filing a consent to use a deceptively similar name, ten dollars.
14. Filing a statement of change of address of registered office or change of registered agent, or both, ~~ten dollars~~.
- ~~15.~~ 15. Filing a statement of or a change of address of registered office by registered agent, ~~ten dollars for each limited partnership affected by the change~~ the fee provided by section 10-01.1-03.
- ~~16.~~ 16. Filing a consent of registered agent to serve in the capacity of registered agent, ~~ten dollars~~.
- ~~17.~~ 17. Filing a resignation as registered agent, ~~ten dollars~~.
- ~~18.~~ 15. Filing a certificate of authority of foreign limited partnership, one hundred dollars.
- ~~19.~~ 16. Filing a certified statement of amendment of foreign limited partnership, forty dollars.
- ~~20.~~ 17. Filing a certified statement of dissolution of foreign limited partnership, twenty-five dollars.

- ~~24.~~ 18. Filing a certified statement of cancellation of foreign limited partnership, twenty-five dollars.
- ~~22.~~ 19. Filing a certified statement of merger of foreign limited partnership, fifty dollars.
- ~~23.~~ 20. Filing a certified statement of conversion of foreign limited partnership, fifty dollars and:
- a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
  - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
- ~~24.~~ 21. Filing a statement of withdrawal of foreign limited partnership, twenty-five dollars.
- ~~25.~~ 22. Filing an annual report of a limited partnership or foreign limited partnership, twenty-five dollars.
- a. The secretary of state shall charge and collect additional fees for late filing of an annual report as follows:
    - (1) After the date provided in subsection 3 of section 45-10.2-108, twenty dollars; and
    - (2) After the dissolution of the limited partnership or the revocation of the certificate of authority of a foreign limited partnership, the reinstatement fee of one hundred dollars.
  - b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 45-10.2-108, or the annual report lacks sufficient payment as required by this subsection.
- ~~26.~~ 23. Any record submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the record.
- ~~27.~~ 24. Filing any process, notice, or demand for service, ~~twenty-five dollars~~ the fee provided in section 10-01.1-03.
- ~~a.~~ 25. Furnishing a certificate of existence or authorization:
- (~~1~~) a. Fifteen dollars; and
  - (~~2~~) b. Five dollars for a search of records.
- ~~b.~~ 26. Furnishing a certified copy of any record, or paper relating to a limited partnership or foreign limited partnership:

- (4) a. One dollar for every four pages or fraction;
- (2) b. Fifteen dollars for the certificate and affixing the seal thereto; and
- (3) c. Five dollars for a search of records.

**SECTION 69. AMENDMENT.** Subsection 1 of section 45-15-03 of the North Dakota Century Code is amended and reenacted as follows:

1. A partnership may file with the secretary of state, along with the fees provided in section 45-13-05, a statement of partnership authority which:
  - a. Must include:
    - (1) The name of the partnership;
    - (2) The street address of the partnership's principal executive office and of one office in this state, if there is one;
    - (3) The name and mailing address of each partner;
    - (4) The address name of the registered office agent of the partnership as provided in chapter 10-01.1 and, if a noncommercial registered agent, the name of the registered agent at that address of the noncommercial registered agent in this state;
    - (5) The name of each partner authorized to execute an instrument transferring real property held in the name of the partnership; and
    - (6) The nature of business to be transacted.
  - b. May state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

**SECTION 70. AMENDMENT.** Section 45-15-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**45-15-03.1. Registered office - Registered agent.**

4. A partnership that files and maintains a statement of partnership authority shall continuously maintain a registered office in this state agent as provided by chapter 10-01.1 and, if a noncommercial registered agent, the address of the noncommercial registered agent in this state. ~~A registered office need not be the same as the principal place of business or the principal executive office of the partnership.~~
2. A partnership that files a statement of partnership authority shall appoint ~~and continuously maintain a registered agent who may be:~~
  - a. An individual residing in this state;
  - b. A domestic corporation;

- e. A domestic limited liability company; or
  - d. A foreign corporation or foreign limited liability company authorized to transact business in this state.
3. The registered agent shall maintain a business office identical to the registered agent's registered office.
  4. Proof of the registered agent's consent to serve in the capacity of registered agent must be filed with the secretary of state, together with the fees provided in section 45-13-05.

**SECTION 71. AMENDMENT.** Section 45-15-03.2 of the North Dakota Century Code is amended and reenacted as follows:

**45-15-03.2. Change of registered office or agent.**

1. A partnership that files and maintains a statement of partnership authority may change the partnership's registered office, change the partnership's registered agent, or state a change in the name of the partnership's registered agent, by filing with the secretary of state, along with the fees provided in section 45-13-05, a statement containing:
  - a. The name of the partnership;
  - b. If the address of the partnership's registered office is changing, the new address of the partnership's registered office;
  - c. If the partnership's registered agent is being designated or changing, the name of the partnership's new registered agent;
  - d. If the name of the partnership's registered agent is changing, the name of the partnership's registered agent as changed;
  - e. A statement that the address of the partnership's registered office and the address of the business office of the partnership's registered agent, as changed, will be identical; and
  - f. A statement that the change of registered office or registered agent was authorized by resolution approved by the partners as provided in chapter 10-01.1.
2. A registered agent of a partnership 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 was given to the partnership at the partnership's principal executive office, or to a legal representative of the partnership. The appointment of the agent terminates thirty days after notice is filed with the secretary of state as provided in chapter 10-01.1.
3. If the business address or 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 partnership represented by that agent by filing with the secretary of state a statement for each partnership as required in subsection 1, except the statement need be signed only by the registered agent, need not be

~~responsive to subdivision f of subsection 4, and must state that a copy of the statement was mailed to each of those partnerships or to the legal representative of each of those partnerships.~~

**SECTION 72. AMENDMENT.** Subsection 5 of section 45-21-04.2 of the North Dakota Century Code is amended and reenacted as follows:

5. A converted organization that is a foreign organization and not authorized to transact business or conduct activities in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection as provided in section 10-01.1-13.

**SECTION 73. AMENDMENT.** Subsection 2 of section 45-21-06 of the North Dakota Century Code is amended and reenacted as follows:

2. The secretary of state of this state is the agent for service of process in an action or proceeding against a surviving foreign partnership to enforce an obligation of a partnership that is a constituent organization. The surviving organization shall promptly notify the secretary of state of the mailing address of its principal executive office and of any change of address. Upon receipt of process, the secretary of state shall mail a copy of the process to the surviving foreign partnership as provided in section 10-01.1-13.

**SECTION 74. AMENDMENT.** Subsection 3 of section 45-22-03 of the North Dakota Century Code is amended and reenacted as follows:

3. A registration, signed by a managing partner, must contain:
  - a. With respect to a domestic limited liability partnership:
    - (1) The name of the domestic limited liability partnership.
    - (2) The nature of the business to be transacted in this state.
    - (3) A statement indicating whether the limited liability partnership will be engaged in farming or ranching in this state or owning or leasing land in this state which is used for farming or ranching.
    - (4) The address of the principal executive office of the domestic limited liability partnership.
    - (5) The ~~address name~~ of the registered ~~office agent~~ of the domestic limited liability partnership as provided in chapter 10-01.1 and the name of the, if a noncommercial registered agent at that, the address of that noncommercial registered agent in this state.
    - (6) The name and address of each managing partner.
    - (7) A statement that the partnership elects to be a limited liability partnership.
    - (8) A deferred effective date, if any.

- b. With respect to a foreign limited liability partnership:
- (1) The name of the foreign limited liability partnership and, if different, the name under which the foreign limited liability partnership proposes to transact business in this state.
  - (2) The jurisdiction of origin.
  - (3) The date on which the foreign limited liability partnership expires in the jurisdiction of origin.
  - (4) The nature of the business to be transacted in this state.
  - (5) A statement indicating whether the foreign limited liability partnership will be engaged in farming or ranching in this state or owning or leasing land in this state which is used for farming or ranching.
  - (6) The address of the principal executive office of the foreign limited liability partnership.
  - (7) ~~The address name of the registered office agent of the foreign limited liability partnership as provided in chapter 10-01.1 and the name of the foreign limited liability partnership, if a noncommercial registered agent at that, the address of that registered agent in this state.~~
  - (8) The name and address of each managing partner.
  - (9) An acknowledgment that the status of the foreign limited liability partnership in this state will automatically expire unless the foreign limited liability partnership continuously maintains limited liability partnership status in the jurisdiction of origin.
- c. The registration must be accompanied by payment of the fees provided in section 45-22-22 together with a certificate of good standing or certificate of existence authenticated by the registering officer of the state or country where the foreign limited liability partnership is originally registered and the consent of the designated registered agent for service of process to serve in that capacity.

**SECTION 75. AMENDMENT.** Section 45-22-11 of the North Dakota Century Code is amended and reenacted as follows:

**45-22-11. Registered office and agent.**

4. A limited liability partnership shall continuously maintain a registered ~~office in this state agent as provided by chapter 10-01.1 and, if a noncommercial registered agent, the address of that noncommercial registered agent in this state. A registered office need not be the same as the principal place of business or the principal executive office of the limited liability partnership.~~



2. A limited liability partnership shall appoint and continuously maintain a registered agent in the registration who may be:
  - a. An individual residing in this state;
  - b. A domestic corporation, domestic limited liability company, or domestic limited liability partnership; or
  - c. A foreign corporation, foreign limited liability company, or foreign limited liability partnership authorized to transact business in this state.
3. Proof of the registered agent's consent to serve in the capacity of registered agent must be filed with the secretary of state, together with the fees provided in section 45-22-22.

**SECTION 76. AMENDMENT.** Section 45-22-12 of the North Dakota Century Code is amended and reenacted as follows:

**45-22-12. Change of registered office or agent.**

1. A limited liability partnership may change the limited liability partnership's registered office, change the limited liability partnership's registered agent, or state a change in the name of the limited liability partnership's registered agent; by filing with the secretary of state, along with the fees provided in section 45-22-22, a statement containing:
  - a. The name of the limited liability partnership.
  - b. If the address of the limited liability partnership's registered office is changing, the new address of the limited liability partnership's registered office.
  - c. If the limited liability partnership's registered agent is to be designated or is changing, the name of the limited liability partnership's new registered agent.
  - d. If the name of the limited liability partnership's registered agent is changing, the name of the limited liability partnership's registered agent as changed.
  - e. A statement that the address of the limited liability partnership's registered office and the address of the business office of the limited liability partnership's registered agent, as changed, will be identical.
  - f. A statement that the change of registered office or registered agent was authorized by resolution of the partnership as provided in chapter 10-01.1.
2. A registered agent of a limited liability partnership may resign by filing with the secretary of state a written notice of resignation, including a statement that a signed copy of the notice was given to the limited liability partnership at the limited liability partnership's principal executive office, or to a legal representative of the limited liability partnership. The appointment of the agent terminates thirty days after

the notice is filed with the secretary of state as provided in chapter 10-01.1.

3. If the business address or name of a registered agent changes, the agent shall change the address of the registered office or name of the registered agent of each limited liability partnership represented by that agent by filing with the secretary of state a statement for each limited liability partnership as required in subsection 1, except the statement need be signed only by the registered agent, need not be responsive to subdivision e or f of subsection 1, and must state that a copy of the statement was mailed to each of those limited liability partnerships or to the legal representative of each of those limited liability partnerships.
4. The fee prescribed in section 45-22-22 for the change of registered office must be refunded if, in the opinion of the secretary of state, the change of address of registered office results from rezoning or postal reassignment.

**SECTION 77. AMENDMENT.** Subsection 2 of section 45-22-13 of the North Dakota Century Code is amended and reenacted as follows:

2. The withdrawal statement must contain:
  - a. With respect to a domestic limited liability partnership:
    - (1) The name of the domestic limited liability partnership.
    - (2) A statement that the domestic limited liability partnership is withdrawing the current registration.
    - (3) An acknowledgment by the domestic limited liability partnership that the withdrawal ends the domestic limited liability partnership's status as a limited liability partnership with respect to periods after the effective date of the withdrawal.
  - b. With respect to a foreign limited liability partnership:
    - (1) The name of the foreign limited liability partnership.
    - (2) The jurisdiction of origin.
    - (3) A statement that the foreign limited liability partnership is not transacting business in this state as a foreign limited liability partnership.
    - (4) A statement that the foreign limited liability partnership surrenders authority to transact business in this state as a foreign limited liability partnership and is withdrawing the foreign limited liability partnership's current registration.
    - (5) An acknowledgment by the foreign limited liability partnership that the withdrawal ends the foreign limited liability partnership's authorization to transact business in this state as a foreign limited liability partnership with respect to periods after the effective date of the withdrawal.

- (6) A statement that the foreign limited liability partnership ~~revokes the authority of the foreign limited liability partnership's registered agent in this state to accept service of process and consents that to~~ service of process based upon any cause of action arising in this state during the time the foreign limited liability partnership was authorized to transact business in this state and that service may be made on the foreign limited liability partnership by service upon the secretary of state as provided in section 10-01.1-13.
- (7) A post-office address to which a person may mail a copy of any process against the foreign limited liability partnership.

**SECTION 78. AMENDMENT.** Section 45-22-16 of the North Dakota Century Code is amended and reenacted as follows:

**45-22-16. Revocation of registration.**

1. The registration of a limited liability partnership may be revoked by the secretary of state ~~upon the occurrence of any of these events if:~~
  - a. The limited liability partnership fails:
    - (1) To appoint and maintain a registered agent and registered office as ~~required by this~~ provided in chapter 10-01.1; ~~or~~
    - (2) ~~To file a report upon any change in the name or business address of the registered agent; or~~
    - (3) To file any amendment to the limited liability partnership's registration required to be filed pursuant to subdivision b or c of subsection 4 of section 45-22-03.
  - b. An intentional misrepresentation is made in any material matter in any registration, report, affidavit, or other document submitted by the limited liability partnership pursuant to this chapter.
2. ~~The~~ Except for revocation of the registration for failure to file the annual report as provided in section 45-22-21.1, the secretary of state may not revoke the registration of a limited liability partnership unless:
  - a. The secretary of state gave the limited liability partnership at least sixty days' notice of the reason for the pending revocation by mail addressed to the limited liability partnership's registered agent at the registered office or, if the limited liability partnership fails to appoint and maintain a registered agent in this state, by mail addressed to the limited liability partnership's principal executive office; and
  - b. During the sixty-day period, the limited liability partnership fails:
    - (1) To appoint and maintain a registered agent as ~~required by this~~ provided in chapter 10-01.1;
    - (2) To file the report of change regarding the name or business address of the registered agent;

- (3) To file any amendment to the limited liability partnership's registration required to be filed pursuant to subdivision b or c of subsection 4 of section 45-22-03; or
  - (4) To correct the misrepresentation.
3. Upon the expiration of the sixty-day period without the limited liability partnership curing the reason for the pending revocation set forth in the notice, the registration is revoked. The secretary of state shall note the revocation in the records of the secretary of state and shall give notice of the revocation to the limited liability partnership. Notice by the secretary of state must be mailed to the last registered agent at the last registered office of record. If the limited liability partnership fails to appoint and maintain a registered office in this state, the notice must be mailed to the limited liability partnership's principal executive office.

**SECTION 79. AMENDMENT.** Section 45-22-17 of the North Dakota Century Code is amended and reenacted as follows:

**45-22-17. Service of process on a limited liability partnership or a foreign limited liability partnership and on a nonresident partner.**

1. ~~The registered agent must be an agent of the limited liability partnership or foreign limited liability partnership and any nonresident partner upon whom any~~ Any process, notice, or demand required or permitted by law to be served on the limited liability partnership, the foreign limited liability partnership, or a partner may be served as provided in section 10-01.1-13.
  - a. ~~When a foreign limited liability partnership transacts business without a registration or when the registration of a foreign limited liability partnership is suspended or revoked, the secretary of state is an agent of the foreign limited liability partnership for service of process, notice, or demand.~~
  - b. ~~Acceptance of a managing partnership status in a limited liability partnership or foreign limited liability partnership 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 on a limited liability partnership or foreign limited liability partnership may be served:~~
  - a. ~~On the registered agent;~~
  - b. ~~On any responsible person found at the registered office or at the principal executive office if located in this state;~~
  - c. ~~On a managing partner of the partnership; or~~
  - d. ~~On the secretary of state as provided in this section.~~
3. ~~If neither the registered agent nor a responsible person can be found at the registered office and if a responsible person affiliated with the limited liability partnership or foreign limited liability partnership cannot be~~

found at the principal place of business in this state, then the secretary of state is an agent of the limited liability partnership or foreign limited liability partnership on whom the process, notice, or demand may be served.

a. Service on the secretary of state:

- (1) Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication.
- (2) Shall include the return of the sheriff or affidavit of a person not a party, verifying that neither a registered agent nor a responsible person can be found at the registered office or at the principal place of business in this state.
- (3) Is deemed personal service on the limited liability partnership or foreign limited liability partnership and may be made by filing with the secretary of state:
  - (a) Three copies of the process, notice, or demand; and
  - (b) The fees provided in section 45-22-22.
- (4) Is returnable in not less than thirty days, notwithstanding a shorter period specified in the process, notice, or demand.

b. The secretary of state immediately shall forward, by registered mail addressed to the limited liability partnership or foreign limited liability partnership at the registered office or principal place of business in this state, a copy of the process, notice, or demand.

4. Process, notice, or demand may be served on a limited liability partnership or foreign limited liability partnership that has voluntarily withdrawn its registration or which has forfeited its registration as provided in section 45-22-21.1. The court shall determine if service is proper:

- a. If a limited liability partnership or foreign limited liability partnership has voluntarily withdrawn its registration, then service may be made as provided in subsection 2.
- b. If a limited liability partnership or foreign limited liability partnership has forfeited its registration as provided in section 45-22-21.1, then service may be made as provided in subsection 3.

5. The secretary of state shall maintain a record of every process, notice, and demand served on the secretary of state under this section, including the date of service and the action taken with reference to the process, notice, or demand.

6. This section does not limit the right of a person to serve process, notice, or demand required or permitted by law to be served on a limited liability partnership or foreign limited liability partnership in any other manner permitted by law.

**SECTION 80. AMENDMENT.** Section 45-22-21.1 of the North Dakota Century Code is amended and reenacted as follows:

**45-22-21.1. Secretary of state - Annual report of domestic limited liability partnership and foreign limited liability partnership.**

1. Each domestic limited liability partnership and each foreign limited liability partnership authorized to transact business in this state, shall file, within the time provided by subsection 3, an annual report setting forth:
  - a. The name of the limited liability partnership and its jurisdiction of origin.
  - b. The address of the registered office of the limited liability partnership in this state, and the name of the limited liability partnership's registered agent in this state at that address.
  - c. The address of the limited liability partnership's chief executive office.
  - d. A brief statement of the character of the business in which the limited liability partnership is actually engaged in this state.
  - e. The name and respective address of each managing partner of the domestic limited liability partnership or foreign limited liability partnership.
  - f. If the limited liability partnership or foreign limited liability partnership owns or leases land that is used for farming or ranching in this state, a statement listing:
    - (1) The names and addresses of all partners; and
    - (2) The acreage [hectarage] and location listed by section, township, range, and county of all land in this state owned or leased by the limited liability partnership or foreign limited liability partnership.
2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as provided in subsection 24 of section 45-22-01, the partnership agreement, or in a resolution approved by the affirmative vote of the required proportion or number of partners. If the limited liability partnership is in the hands of a receiver or trustee, the annual report must be signed on behalf of the limited liability partnership by the receiver or trustee. The secretary of state may destroy any annual report provided for in this section after the annual report is on file for six years.
3. The annual report of a limited liability partnership must be delivered to the secretary of state before April first of each year, except the first annual report of a limited liability partnership must be delivered before April first of the year following the calendar year in which the registration is filed by the secretary of state. A limited liability partnership in

existence on July 1, 1999, shall file the first annual report before April first in the year of the expiration of the registration in effect on July 1, 1999.

- a. An annual report in a sealed envelope postmarked by the United States postal service before April first, or an annual report in a sealed packet with a verified shipment date by any other carrier service before April first, complies with this requirement.
  - b. The secretary of state must file the annual report if the annual report conforms to the requirements of subsection 2.
    - (1) If the annual report does not conform, the annual report must be returned to the limited liability partnership for any necessary corrections.
    - (2) If the annual report is filed before the deadlines provided in this subsection, penalties for the failure to file a report within the time provided do not apply if the annual report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.
4. After the date established under subsection 3, the secretary of state shall notify any limited liability partnership failing to file an annual report that the limited liability partnership's registration is not in good standing and that the registration of the limited liability partnership may be revoked pursuant to subsection 5.
- a. The secretary of state shall mail notice of revocation to the last registered agent at the last registered office ~~of record~~.
  - b. If the limited liability partnership files an annual report after the notice is mailed, together with the annual report filing fee and late filing penalty fee as provided by section 45-22-22, the secretary of state shall restore the limited liability partnership's registration to good standing.
5. A domestic limited liability partnership that does not file an annual report, along with the statutory filing and penalty fees, within six months after the date established in subsection 3, forfeits the limited liability partnership's registration.
- a. The secretary of state shall note the revocation of the domestic limited liability partnership's registration on the records of the secretary of state and shall give notice of the action to the revoked domestic limited liability partnership.
  - b. Notice by the secretary of state must be mailed to the domestic limited liability partnership's last registered agent at the last registered office ~~of record~~.
6. A foreign limited liability partnership that does not file an annual report, along with the statutory filing and penalty fees, within six months after

the date established by subsection 3, forfeits the foreign limited liability partnership's registration and authority to transact business in this state.

- a. The secretary of state shall note the revocation of the foreign limited liability partnership's registration and authority on the records of the secretary of state and shall give notice of the action to the foreign limited liability partnership.
  - b. Notice by the secretary of state must be mailed to the foreign limited liability partnership's last registered agent at the last registered office ~~of record~~.
  - c. The secretary of state's decision that a registration must be revoked under this subsection is final.
7. A domestic limited liability partnership with a registration that is revoked for failure to file an annual report or a foreign limited liability partnership with registration and authority that are forfeited by failure to file an annual report may be reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report and a reinstatement fee as provided in section 45-22-22. The fees must be paid and the report filed within one year following the revocation. Reinstatement under this subsection does not affect any right or liability of a domestic limited liability partnership or a foreign limited liability partnership for the time from the revocation to the reinstatement.

<sup>44</sup> **SECTION 81. AMENDMENT.** Subsection 1 of section 45-22-22 of the North Dakota Century Code is amended and reenacted as follows:

1. The secretary of state shall charge and collect for:
  - a. Filing a registration as a domestic limited liability partnership, ~~twenty-five~~ thirty-five dollars. If there are more than two managing partners, an additional three dollars must be paid for each additional managing partner not to exceed two hundred fifty dollars.
  - b. Filing a registration as a foreign limited liability partnership,  ~~fifty~~ sixty dollars.
  - c. Filing an annual report of a domestic limited liability partnership or foreign limited liability partnership, twenty-five dollars.
    - (1) The secretary of state shall charge and collect additional fees for late filing of an annual report as follows:
      - (a) After the date provided in subsection 3 of section 45-22-21.1, twenty dollars; and

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<sup>44</sup> Section 45-22-22 was also amended by section 76 of House Bill No. 1241, chapter 101.



- (b) After the revocation of the domestic limited liability partnership registration or the foreign limited liability partnership registration, the reinstatement fee of fifty dollars.
- (2) Fees paid to the secretary of state according to this subdivision are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 45-22-21.1 or the annual report lacks sufficient payment as required by this subdivision.
- d. Filing a statement of correction or amended registration, twenty-five dollars.
  - e. Filing an application to reserve a name, ten dollars.
  - f. Filing a notice of transfer of a reserved name, ten dollars.
  - g. Filing a cancellation of reserved name, ten dollars.
  - h. Filing a consent to use of name, ten dollars.
  - i. Filing a statement of change of address of registered office or change of registered agent or both, ~~ten dollars~~.
  - ~~j.~~ Filing a statement of or change of address of registered office by registered agent, ~~ten dollars for each domestic limited liability partnership or foreign limited liability partnership affected by the change.~~
  - ~~k.~~ Filing a registered agent's consent to serve in the capacity of registered agent, ~~ten dollars.~~
  - ~~l.~~ Filing a resignation as registered agent, ~~ten dollars~~ the fee provided in section 10-01.1-03.
  - ~~m.~~ j. Filing a notice of withdrawal, ten dollars.
  - ~~n.~~ k. Filing a certificate of fact stating a merger of a foreign limited liability partnership registered with the secretary of state, fifty dollars.
  - ~~o.~~ l. Filing any other statement of a domestic limited liability partnership, ten dollars.
  - ~~p.~~ m. Filing any process, notice, or demand for service, ~~twenty-five dollars~~ the fee provided in section 10-01.1-03.
  - ~~q.~~ n. Any record submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the record.

**SECTION 82. AMENDMENT.** Section 45-23-08 of the North Dakota Century Code is amended and reenacted as follows:

**45-23-08. Secretary of state - Fees for filing records.** The secretary of state shall charge and collect for:

1. Filing a certificate of limited liability limited partnership, one hundred ten dollars.
2. Filing a certificate of limited liability limited partnership amendment, forty dollars.
3. Filing a statement of conversion of a limited liability limited partnership, fifty dollars and:
  - a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
  - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
4. Filing abandonment of conversion, fifty dollars.
5. Filing limited liability limited partnership articles of merger, fifty dollars.
6. Filing abandonment of merger or exchange, fifty dollars.
7. Filing a limited liability limited partnership statement of correction, forty dollars.
8. Filing a certificate of limited liability limited partnership dissolution, twenty-five dollars.
9. Filing a certificate of limited liability limited partnership cancellation, twenty-five dollars.
10. Filing a reservation of limited liability limited partnership name, ten dollars.
11. Filing a notice of transfer of reserved limited liability limited partnership name, ten dollars.
12. Filing a cancellation of a reserved limited liability limited partnership name, ten dollars.
13. Filing a consent to use of a deceptively similar name, ten dollars.
14. Filing a statement of change of address of registered office or change of registered agent, or both, ~~ten dollars.~~
15. ~~Filing or~~ a statement of change of address of registered office by registered agent, ~~ten dollars for each limited liability limited partnership affected by the change.~~

- ~~16.~~ 16. Filing a registered agent's consent to serve in the capacity of registered agent, ten dollars.
- ~~17.~~ 17. Filing a resignation as registered agent, ten dollars the fee provided in section 10-01.1-03.
- ~~48.~~ 15. Filing a registration of foreign limited liability limited partnership, one hundred dollars.
- ~~49.~~ 16. Filing a certified statement of amendment of foreign limited liability limited partnership, twenty-five dollars.
- ~~20.~~ 17. Filing a certified statement of dissolution of foreign limited liability limited partnership, twenty-five dollars.
- ~~24.~~ 18. Filing a certified statement of merger of foreign limited liability limited partnership, fifty dollars.
- ~~22.~~ 19. Filing a certified statement of conversion of foreign limited liability limited partnership, fifty dollars and:
- a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
  - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
- ~~23.~~ 20. Filing a certified statement of cancellation of foreign limited liability limited partnership, twenty-five dollars.
- ~~24.~~ 21. Filing a statement of withdrawal of foreign limited liability limited partnership, twenty-five dollars.
- ~~25.~~ 22. Filing an annual report of limited liability limited partnership, twenty-five dollars.
- a. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
    - (1) After the date provided in subsection 3 of section 45-10.2-108, twenty dollars; and
    - (2) After the dissolution of the limited liability limited partnership or the revocation of the registration of a foreign limited liability limited partnership, the reinstatement fee of one hundred dollars.
  - b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by

section 45-10.2-108 or the annual report lacks sufficient payment as required by this subsection.

- ~~26.~~ 23. Any record submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the record.
- ~~27.~~ 24. Filing any process, notice, or demand for service, ~~twenty-five dollars~~ the fee provided in section 10-01.1-03.
- ~~28.~~ 25. Furnishing a certificate of existence or authorization:
- a. Fifteen dollars; and
  - b. Five dollars for a search of records.
- ~~29.~~ 26. Furnishing a certified copy of any record or paper relating to a limited partnership or foreign limited partnership:
- a. One dollar for every four pages or fraction;
  - b. Fifteen dollars for the certificate and affixing the seal thereto; and
  - c. Five dollars for a search of records.

**SECTION 83. AMENDMENT.** Subsection 8 of section 54-09-04 of the North Dakota Century Code is amended and reenacted as follows:

8. For filing any process, notice, or demand for service, ~~twenty dollars~~ the fee provided in section 10-01.1-03.

**SECTION 84. AMENDMENT.** Section 54-09-07 of the North Dakota Century Code is amended and reenacted as follows:

**54-09-07. Service of process on secretary of state if agent not found - Procedure - Time for answering process.** If an agent other than the secretary of state has been appointed for receipt of service, but the affidavit of a sheriff or of an adult who is not a party to a proceeding establishes that diligent inquiry has been made and that personal service cannot be accomplished upon any registered agent, officer, or superintending, managing, or general agent of an entity, then the secretary of state may be deemed the agent of the entity for receiving service of process. Service on the secretary of state must be made by registered mail or personal delivery to the secretary of state and not by electronic communication. The party serving process, notice, or demand must provide a copy of the affidavit of a sheriff or of an adult who is not a party to the proceeding that service cannot be accomplished and must file with the secretary of state three copies of the process, notice, or demand, together with the fees required by section 54-09-04. Service on the secretary of state constitutes personal service on the entity. The secretary of state shall immediately forward a copy of the sheriff or other adult's affidavit and of the process, notice, or demand by registered mail addressed to the entity to be served at its registered office or last address on file with the secretary of state. Notwithstanding a shorter period of time specified in the process, notice, or demand, the entity has thirty days after the secretary of state receives the documents to respond to the process, notice, or demand as provided in section 10-01.1-13.

**SECTION 85. REPEAL.** Section 10-15-12.1 of the North Dakota Century Code is repealed.

**SECTION 86. EFFECTIVE DATE.** This Act becomes effective July 1, 2008.

Approved March 16, 2007  
Filed March 16, 2007

**CHAPTER 100****HOUSE BILL NO. 1492**

(Representatives Damschen, DeKrey, Monson, Vigesaa)  
(Senators Oehlke, Wanzek)

**CORPORATE FARMING VIOLATION PENALTY**

AN ACT to amend and reenact section 10-06.1-24 of the North Dakota Century Code, relating to a penalty for violation of the corporate farming provisions.

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

**SECTION 1. AMENDMENT.** Section 10-06.1-24 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-24. Enforcement - Penalty.**

1. The recorder shall mail or deliver a copy of every instrument filed or recorded, within thirty days after the instrument is recorded, to the attorney general if the instrument documents evidence of a lease agreement or purchase agreement pursuant to subsection 6 or 7 or if the instrument conveys the title to farmland or ranchland to a corporation or limited liability company. The attorney general shall commence an action in the district court of the county in which the substantial portion of 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 recorder 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 or limited liability company 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 recorder of each county in which any portion of the land is located. Thereafter, the corporation or limited liability company 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 or ranching operations. ~~Any~~ Except as otherwise provided in subsection 10, any corporation or limited liability company that fails to comply with the court's order is subject to a civil penalty not to exceed twenty-five thousand dollars and may be dissolved or terminated 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 or limited liability company grantee, corporate or limited liability company successor, or corporation or limited liability company assignee of the corporation or limited liability company not authorized to do business under this chapter.
3. Any land not divested within the divestment period prescribed must 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 or limited liability company from completing performance on the remainder of any leasehold which is in violation of this chapter.

4. Subject to the divestiture requirements of subsections 5, 6, and 7, a domestic or foreign corporation or limited liability company may acquire 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.
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.
6. The disposition requirement does not apply to a corporation or limited liability company 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 the redemption period of the mortgage if the mortgage had been foreclosed, that corporation or limited liability company 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 recorder 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 may not exceed seven percent of the appraised value.
7. The disposition requirement does not apply to a corporation or limited liability company 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 the redemption period of the mortgage if the mortgage had been foreclosed, that corporation or limited liability company 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 recorder 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 may not 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 or limited liability company, one selected by the prior mortgagor, and the third selected by the first two appraisers.
9. If a corporation or limited liability company holds land pending divestiture, and the holding is not otherwise governed by this section, the land must be leased to persons actually engaged in farming or ranching and a disposal may not be to a corporation or limited liability

company unless ownership by that corporation or limited liability company is authorized under this chapter.

10. The civil penalty for a violation of section 10-06.1-10 may not exceed one hundred thousand dollars.

~~40-~~ 11. ~~Any~~ Except as provided in subsection 10, any corporation or limited liability company continuing to violate this chapter is subject to a civil penalty not to exceed twenty-five thousand dollars and may be dissolved or terminated by the attorney general in accordance with the laws of this state.

Approved April 11, 2007

Filed April 13, 2007



**CHAPTER 101****HOUSE BILL NO. 1241**

(Representative DeKrey)  
(Senator Nething)

**CORPORATION AND LLC LAW REVISIONS**

AN ACT to create and enact section 10-19.1-00.1, a new section to chapter 10-19.1, a new subsection to section 10-19.1-48, sections 10-19.1-74.1 and 10-19.1-139.1, a new section to chapter 10-32, section 10-32-42.1, a new subsection to section 10-32-85, section 10-33-01.3, a new subsection to section 10-33-44, and sections 10-33-72.1, 10-34-02.1, 45-10.2-06.1, and 45-13-02.1 of the North Dakota Century Code, relating to business corporations, limited liability companies, nonprofit corporations, real estate investment trusts, limited partnerships, and partnerships; and to amend and reenact sections 10-19.1-01, 10-19.1-01.2, 10-19.1-10, 10-19.1-13, and 10-19.1-23, subsection 2 of section 10-19.1-39, section 10-19.1-41, subsection 3 of section 10-19.1-61, section 10-19.1-63, subsection 1 of section 10-19.1-65, subsection 6 of section 10-19.1-66, section 10-19.1-69, subsection 1 of section 10-19.1-75, subsection 1 of section 10-19.1-76.1, subsection 2 of section 10-19.1-84, section 10-19.1-87, subsection 1 of section 10-19.1-93, sections 10-19.1-96, 10-19.1-97, and 10-19.1-98, subsection 1 of section 10-19.1-99, section 10-19.1-100, subsection 1 of section 10-19.1-100.1, section 10-19.1-101, subsection 2 of section 10-19.1-102, sections 10-19.1-102.1, 10-19.1-103, and 10-19.1-104, subsection 2 of section 10-19.1-104.1, subsection 1 of section 10-19.1-110, sections 10-19.1-146, 10-19.1-147, 10-32-02, 10-32-07, 10-32-10, and 10-32-27, subsection 1 of section 10-32-37, section 10-32-43, subsection 1 of section 10-32-76, subsection 2 of section 10-32-94, section 10-32-100, subsection 1 of section 10-32-101, section 10-32-102, subsection 1 of section 10-32-103, sections 10-32-104 and 10-32-105, subsections 2 and 3 of section 10-32-106, sections 10-32-106.1 and 10-32-107, subsection 4 of section 10-32-108, sections 10-33-01, 10-33-06, 10-33-10, 10-33-34, and 10-33-73, subsection 40 of section 45-10.2-02, subsection 1 of section 45-10.2-27, section 45-10.2-81, subsection 26 of section 45-13-01, subsection 6 of section 45-13-05, subsection 24 of section 45-22-01, subsection 2 of section 45-22-22, and subsection 24 of section 45-23-01 of the North Dakota Century Code, relating to business corporations, limited liability companies, nonprofit corporations, limited partnerships, partnerships, limited liability partnerships, and limited liability limited partnerships.

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

**SECTION 1.** Section 10-19.1-00.1 of the North Dakota Century Code is created and enacted as follows:

**10-19.1-00.1. Citation.** This chapter may be cited as the "North Dakota Business Corporation Act."

<sup>45</sup> **SECTION 2. AMENDMENT.** Section 10-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-01. Definitions.** For purposes of this chapter, unless the context otherwise requires:

1. "Acquiring corporation" means the domestic or foreign corporation that acquires the shares of a corporation in an exchange.
2. "Acquiring organization" means the ~~corporation, foreign corporation, or domestic or foreign limited liability company organization~~ organization acquiring in an exchange the shares ownership interests of a corporation or another foreign corporation or the membership interests of a domestic or foreign limited liability company or domestic organization participating in an exchange.
3. "Address" means:
  - a. In the case of a registered office or principal executive office, the mailing address, including the zip code, of the actual office location, which may not be only a post-office box; and
  - b. In any other case, the mailing address, including the zip code.
4. "Articles" means:
  - a. 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, articles of conversion, and articles of dissolution.
  - b. In the case of a foreign corporation, the term includes all records serving a similar function required to be filed with the secretary of state or other officer of the ~~corporation's~~ state of incorporation of the foreign corporation.
5. "Authenticated electronic communication" means:
  - a. That the electronic communication is delivered:
    - (1) To the principal place of business of the corporation; or
    - (2) To an officer or agent of the corporation authorized by the corporation to receive the electronic communication; and

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<sup>45</sup> Section 10-19.1-01 was also amended by section 3 of House Bill No. 1035, chapter 354.

- b. That the electronic communication sets forth information from which the corporation can reasonably conclude that the electronic communication was sent by the purported sender.
6. "Ballot" means a written ballot or a ballot transmitted by electronic communications.
7. "Board" or "board of directors" means the board of directors of a corporation.
8. "Board member" means:
  - a. An individual serving on the board of directors in the case of a corporation; and
  - b. An individual serving on the board of governors in the case of a limited liability company.
9. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how that code is designated.
10. "Class", when used with reference to ~~shares ownership interests~~, means a category of ~~shares ownership interests~~ that differs in designation or one or more rights or preferences from another category of ~~shares ownership interests~~ of the ~~corporation~~ organization.
11. "Closely held corporation" means a corporation that does not have more than thirty-five shareholders.
12. "Constituent corporation" means a corporation or a foreign corporation that:
  - a. In a merger, is either the surviving corporation or a foreign or domestic corporation that is merged into the surviving organization; or
  - b. In an exchange, is either the acquiring corporation or a foreign or domestic corporation whose shares are acquired by the acquiring organization.
13. "Constituent organization" means a ~~corporation, foreign corporation, limited liability company, or foreign limited liability company~~ an organization that:
  - a. In a merger, is either the surviving organization or an organization that is merged into the surviving organization; or
  - b. In an exchange, is either the acquiring organization or an organization whose securities are acquired by the acquiring organization.
14. "Converted organization" means the organization into which a converting organization converts pursuant to sections 10-19.1-104.1 through 10-19.1-104.6.

15. "Converting organization" means an organization that converts into another organization pursuant to sections 10-19.1-104.1 through 10-19.1-104.6.
16. "Corporation" or "domestic corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.
17. "Director" means a member of the board.
18. "Distribution" means a direct or indirect transfer of money or other property, other than a corporation's its own shares, with or without consideration, or an incurrence or issuance of indebtedness, by a corporation to any of ~~the corporation's~~ its shareholders in respect of ~~the corporation's~~ its shares, and may be in the form of a dividend, an interim distribution, or a distribution in liquidation, or as consideration for the purchase, redemption, or other acquisition of ~~the corporation's~~ its shares, or otherwise.
19. "Division" or "combination" means dividing or combining shares of a class or series, whether issued or unissued, into a greater or lesser number of shares of the same class or series.
20. "Domestic organization" means an organization created under the laws of this state.
21. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
22. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper that:
  - a. Creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
  - b. May be directly reproduced in paper form by the recipient through an automated process.
23. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
24. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and signed or adopted by a person with the intent to sign the record.
25. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:
  - a. That a record meeting the applicable requirements of this chapter, together with the fees provided in section 10-19.1-147, was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law.
  - b. That the secretary of state did then:

- (1) Record the actual date on which the record was filed, and if different the effective date of filing; and
  - (2) Record the record in the office of the secretary of state.
26. "Foreign corporation" means a corporation organized for profit which is incorporated under laws other than the laws of this state for a purpose for which a corporation may be incorporated under this chapter.
27. "Foreign limited liability company" means a limited liability company organized under laws other than the laws of this state for a purpose for which a limited liability company may be organized under chapter 10-32.
28. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.
29. "Good faith" means honesty in fact in the conduct of an act or transaction.
30. "Governing body" means for an organization that is:
  - a. A corporation, its board of directors;
  - b. A limited liability company, its board of governors; or
  - c. Any other organization, the body selected by its owners that has the ultimate power to determine the policies of the organization and to control its policies.
31. "Governing statute" of an organization means:
  - a. With respect to a domestic organization, the following chapters of this code which govern the internal affairs of the organization:
    - (1) If a corporation, then this chapter;
    - (2) If a limited liability company, then chapter 10-32;
    - (3) If a general partnership, then chapters 45-13 through 45-21;
    - (4) If a limited partnership, then chapter 45-10.2;
    - (5) If a limited liability partnership, then chapter 45-22; and
    - (6) If a limited liability limited partnership, then chapter 45-23; and
  - b. With respect to a foreign organization, the laws of the jurisdiction under which the organization is created and under which the internal affairs of the organization are governed.
- ~~34.~~ 32. "Intentionally" means that the person referred to 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:

- a. If the person intentionally does the act or causes the result prohibited by the statute; or
- b. 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.

~~32.~~ 33. "Legal representative" means a person empowered to act for another person, including an agent, a manager, an officer, a partner, or an associate of an organization; a trustee of a trust; a personal representative; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator.

~~33.~~ 34. "Limited liability company" or "domestic limited liability company" means a limited liability company, other than a foreign limited liability company, organized under or governed by chapter 10-32.

~~34.~~ 35. "Nonprofit corporation" means a corporation, whether domestic or foreign, incorporated under or governed by chapter 10-33.

~~35.~~ 36. "Notice":

- a. Is given by a shareholder of a corporation to the corporation or an officer of the corporation:
  - (1) When in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation; or
  - (2) When given by a form of electronic communication consented to by the corporation to which the notice is given if by:
    - (a) Facsimile communication, when directed to a telephone number at which the corporation has consented to receive notice.
    - (b) Electronic mail, when directed to an electronic mail address at which the corporation has consented to receive notice.
    - (c) Posting on an electronic network on which the corporation has consented to receive notice, together with separate notice to the corporation of the specific posting, upon the later of:
      - [1] The posting; or
      - [2] The giving of the separate notice.

- (d) Any other form of electronic communication by which the corporation has consented to receive notice, when directed to the corporation.
- b. Is given by a publicly held corporation to a shareholder if the notice is addressed to the shareholder or group of shareholders in a manner permitted by the rules and regulations under the Securities Exchange Act of 1934, as amended, provided that the corporation has first received any affirmative written consent or implied consent required under those rules and regulations.
- c. Is given, in all other cases:
  - (1) When mailed to the person at an address designated by the person or at the last-known address of the person;
  - (2) When handed to the person;
  - (3) When left at the office of the person with a clerk or other person in charge of the office or:
    - (a) If there is no one in charge, when left in a conspicuous place in the office; or
    - (b) 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 there; or
  - (4) When given by a form of electronic communication consented to by the person to whom the notice is given if by:
    - (a) Facsimile communication, when directed to a telephone number at which the person has consented to receive notice.
    - (b) Electronic mail, when directed to an electronic mail address at which the person has consented to receive notice.
    - (c) Posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:
      - [1] The posting; or
      - [2] The giving of the separate notice.
    - (d) Any other form of electronic communication by which the person has consented to receive notice, when directed to the person.
  - (5) When the method is fair and reasonable when all of the circumstances are considered.

- d. Is given by mail when deposited in the United States mail with sufficient postage affixed.
  - e. Is deemed received when it is given.
- ~~36-~~ 37. "Officer" means an individual who is eighteen years of age or more who is:
- a. Elected, appointed, or otherwise designated as an officer by the board; or
  - b. Deemed elected as an officer pursuant to section 10-19.1-56.
- ~~37-~~ 38. "Organization" means:
- a. Whether domestic or foreign, a corporation, limited liability company, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, or any other person subject to a governing statute; but
  - b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction.
39. "Originating records" means for an organization that is:
- a. A corporation, its articles of incorporation;
  - b. A limited liability company, its articles of organization;
  - c. A limited partnership, its certificate of limited partnership;
  - d. A limited liability partnership, its registration; or
  - e. A limited liability limited partnership, its certificate of limited liability limited partnership.
- ~~38-~~ 40. "Outstanding shares" means all shares duly issued and not reacquired by a corporation.
- ~~39-~~ 41. "Owners" means:
- a. ~~Shareholders in the case of a corporation; and~~
  - b. ~~Members in the case of a limited liability company or a nonprofit corporation~~ the holders of ownership interests in an organization.
- ~~40-~~ 42. "Ownership interests" means for ~~an~~ a domestic or foreign organization that is:
- a. A corporation, its shares;
  - b. A limited liability company, its membership interests;
  - c. A limited partnership, its partnership interests;



- d. A general partnership, its partnership interests;
  - e. A limited liability partnership, its partnership interests; or
  - f. A limited liability limited partnership, its partnership interests; or
  - g. Any other organization, its governance or transferable interests.
- 41- ~~43.~~ 43. "Parent" of a specified ~~corporation organization~~ means a ~~corporation, a foreign corporation, a limited liability company, or a foreign limited liability company~~ an organization that directly, or indirectly through related organizations, owns more than fifty percent of the voting power of the ~~shares ownership interests~~ entitled to vote for directors or other members of the governing body of the specified ~~corporation~~ organization.
- 42- ~~44.~~ 44. "Principal executive office" means:
- a. If the corporation has an elected or appointed president, then an office where the elected or appointed president of a corporation has an office; or
  - b. If the corporation has no elected or appointed president, then the registered office of the corporation.
- 43- ~~45.~~ 45. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- 44- ~~46.~~ 46. "Registered office" means the place in this state designated in a corporation's articles of incorporation or in a foreign corporation's certificate of authority as the registered office.
- 45- ~~47.~~ 47. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:
- a. Owns, directly or indirectly, at least fifty percent of the ~~shares, membership interests, or other~~ ownership interests of another organization;
  - b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or more of the voting members of the governing body of another organization; or
  - c. Has the power, directly or indirectly, to direct or cause the direction of the management and policies of another organization, whether through the ownership of voting interests, by contract, or otherwise.
- 46- ~~48.~~ 48. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.
- 47- ~~49.~~ 49. "Security" has the meaning given in section 10-04-02.

- ~~48-~~ 50. "Series" means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to a corporation's 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.
- ~~49-~~ 51. "Share" means one of the units, however designated, into which the shareholders' proprietary interests of the shareholder in a corporation are divided.
- ~~50-~~ 52. "Shareholder" means a person registered on the books or records of a corporation or the corporation's transfer agent or registrar as the owner of whole or fractional shares of the corporation.
- ~~54-~~ 53. "Signed" means:
- a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the record, is placed on a record; ~~as provided under section 41-01-14~~ with the present intention to authenticate that record; and
  - b. With respect to a record required by this chapter to be filed with the secretary of state, that:
    - (1) The record is signed by a person authorized to do so by this chapter, the articles or bylaws, or a resolution approved by the directors as required under section 10-19.1-46 or the shareholders as required under section 10-19.1-74; and
    - (2) The signature and the record are communicated by a method or medium of communication acceptable by the secretary of state.
- ~~52-~~ 54. "Subscriber" means a person that subscribes for shares in a corporation, whether before or after incorporation.
- ~~53-~~ 55. "Subsidiary" of a specified ~~corporation~~ organization means:
- a. ~~A corporation or a foreign corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly, or indirectly through related organizations, by the specified corporation; or~~
  - b. ~~A limited liability company or a foreign limited liability company having more than fifty percent of the voting power of its membership interests entitled to vote for governors owned directly, or indirectly through related limited liability companies or corporations, by the specified limited liability company or~~ an organization having more than fifty percent of the voting power of its ownership interests entitled to vote for directors, governors, or other members of the governing body of the organization owned directly, or indirectly, through related organizations, by the specified organization.

- ~~54.~~ 56. "Surviving corporation" means the domestic or foreign corporation resulting from a merger which:
- a. May preexist the merger; or
  - b. May be created by the merger.
- ~~55.~~ 57. "Surviving organization" means the ~~corporation or foreign corporation or domestic or foreign limited liability company~~ organization resulting from a merger which:
- a. May preexist the merger; or
  - b. May be created by the merger.
- ~~56.~~ 58. "Vote" includes authorization by written action.
- ~~57.~~ 59. "Written action" means:
- a. A written record signed by all of the persons required to take the action; or
  - b. The counterparts of a written record signed by any of the persons taking the action described.
    - (1) Each counterpart constitutes the action of the person signing; and
    - (2) All the counterparts, taken together, constitute one written action by all of the persons signing the counterparts.

**SECTION 3. AMENDMENT.** Section 10-19.1-01.2 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-01.2. Knowledge and notice.**

1. A person knows or has knowledge of a fact if 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 or have knowledge of the fact.
2. A person has notice of a fact if the person:
  - a. Knows of the fact;
  - b. Has received notice of the fact as provided in subsection ~~35~~ 36 of section 10-19.1-01;
  - c. Has reason to know the fact exists from all of the facts known to the person at the time in question; or
  - d. Has notice of it under subsection 3.
3. Subject to subsection 8, a person has notice of:

- a. The intention of a corporation to dissolve, ninety days after the effective date of the filed notice of intent to dissolve;
  - b. The dissolution of a corporation, ninety days after the effective date of the filed articles of dissolution;
  - c. The conversion of a corporation, ninety days after the effective date of the filed articles of conversion; or
  - d. The merger of a corporation, ninety days after the effective date of the filed articles of merger.
4. A person notifies or gives a notification to another person by taking the steps provided in subsection ~~35~~ 36 of section 10-19.1-01, whether or not the other person learns of it.
  5. A person receives a notification as provided in subsection ~~35~~ 36 of section 10-19.1-01.
  6. Except as otherwise provided in subsection 7 and except as otherwise provided in subsection ~~35~~ 36 of section 10-19.1-01, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the attention of the individual if the person had exercised reasonable diligence.
    - a. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines.
    - b. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the regular duties of the individual or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.
  7. Knowledge, notice, or receipt of a notification of a fact relating to the corporation by an officer or director is effective immediately as knowledge of, notice to, or receipt of a notification by the corporation, except in the case of a fraud on the corporation committed by or with the consent of the officer or director. Knowledge, notice, or receipt of a notification of a fact relating to the corporation by a shareholder who is not an officer or director, is not effective as knowledge by, notice to, or receipt of a notification by the corporation.
  8. Notice otherwise effective under subsection 3 does not affect the power of a person to transfer real property held in the name of a corporation unless at the time of transfer a certified copy of the relevant statement, amendment, or articles, as filed with the secretary of state, has been recorded in the office of the county recorder in the county in which the real property affected by the statement, amendment, or articles is located.

9. With respect to notice given by a form of electronic communication:
  - a. Consent by an officer or director to notice given by electronic communication may be given in writing or by authenticated electronic communication. The corporation is entitled to rely on any consent so given until revoked by the officer or director. However, no revocation affects the validity of any notice given before receipt by the corporation of revocation of the consent.
  - b. An affidavit of an officer or director or an authorized agent of the corporation, that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.

**SECTION 4.** A new section to chapter 10-19.1 of the North Dakota Century Code is created and enacted as follows:

**Reservation of legislative right.** The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A corporation incorporated under or governed by this chapter is subject to this reserved right.

<sup>46</sup> **SECTION 5. AMENDMENT.** Section 10-19.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**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.
  - e. The effective date of incorporation if a later date than that on which the certificate of incorporation is issued by the secretary of state, which may not be later than ninety days after the date on which the certificate of incorporation is issued.
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.~~

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<sup>46</sup> Section 10-19.1-10 was also amended by section 12 of Senate Bill No. 2153, chapter 99.

- ~~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. A corporation must allow cumulative voting for directors as provided in section 10-19.1-39.
  - ~~e.~~ 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.~~ f. 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.~~ g. 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.~~ h. 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.~~ i. 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.~~ j. 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.~~ k. Subject to article XII of the Constitution of North Dakota, 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.~~ l. 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.

- † m. 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.
  - n. A shareholder has certain preemptive rights, unless otherwise provided by the board as provided in section 10-19.1-65.
  - ‡ o. 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 when this chapter requires the affirmative vote of:
    - (1) A plurality of the votes cast as provided in subsection 1 of section 10-19.1-39; or
    - (2) A majority of the voting power of all shares entitled to vote as provided in subsection 1 of section 10-19.1-74.
  - p. A written action of shareholders must be signed by all shareholders as provided in section 10-19.1-75.
  - ‡ q. Shares of a corporation acquired by the corporation may be reissued as provided in subsection 1 of section 10-19.1-93.
  - ⊖ r. 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.
  - ‡ s. 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.
  - ⊖ t. Each share has one vote unless otherwise provided in the terms of the share as provided in subsection 5 of section 10-19.1-73.2.
  - ‡ u. The board may effect share dividends, divisions, and combinations under certain circumstances without shareholder approval as provided in section 10-19.1-61.1.
  - ⊖ v. ~~A written action of shareholders must be signed by all shareholders as provided in section 10-19.1-75.~~
4. 3. The following provisions govern a corporation unless modified either in the articles or in the bylaws:
- a. A director serves 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 or 10-19.1-41.1 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~~:
  - (1) Must consist of one or more ~~persons~~ individuals, 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; and
  - (2) May create one or more subcommittees, each consisting of one or more members of the committees and may delegate to the subcommittee any or all of the authority of the committee as provided in subsection 7 of section 10-19.1-48.
- i. The board may establish a special litigation committee as provided in section 10-19.1-48.
- j. Unless the board determines otherwise, the officers have specified duties as provided in section 10-19.1-53.
- k. 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.
- l. The ~~board~~ corporation may establish uncertificated shares as provided in subsection 6 of section 10-19.1-66.
- m. Regular meetings of shareholders need not be held, unless demanded by a shareholder under certain conditions as provided in section 10-19.1-71.
- n. No fewer than ten nor more than fifty days' notice is required for a meeting of shareholders as provided in subsection 3 of section 10-19.1-73.
- o. 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.



- p. 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 and entitled to vote at the meeting as provided in subsection 1 of section 10-19.1-73.2.
  - q. Indemnification of certain persons is required as provided in section 10-19.1-91.
  - r. 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- 4. 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, or eliminating or limiting a director's personal liability, 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 10-19.1-52.
  - 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 6 of section 10-19.1-73.2.
  - 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.
  - u. A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles as provided in section 10-19.1-50.
- ~~6.~~ 5. The articles may contain other provisions not inconsistent with section 10-19.1-32 or any other provision of law relating to the management of the business or the regulation of the affairs of the corporation.
- ~~7.~~ 6. It is not necessary to set forth in the articles any of the corporate powers granted by this chapter.
- ~~8.~~ 7. Subsection ~~5~~ 4 does not limit the right of the board, by resolution, to take an action that the bylaws may authorize under this section without including the authorization in the bylaws, unless the authorization is required to be included in the bylaws by another provision of this chapter.
8. Except for provisions included pursuant to subsection 1, any provision of the articles may:
- a. Be made dependent upon facts ascertainable outside the articles, but only if the manner in which the facts operate upon the provision is clearly and expressly set forth in the articles; and
  - b. Incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the corporation, but only if the corporation retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

**SECTION 6. AMENDMENT.** Section 10-19.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**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 "company", "corporation", "incorporated", "limited", or an abbreviation of one or more of these words.
  - c. May not contain the words "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.
  - d. May not contain a word or phrase that indicates or implies the corporation:
    - (1) Is incorporated for a purpose other than:
      - (a) A lawful business purpose for which a corporation may be incorporated under this chapter; or
      - (b) For a purpose stated in its articles of incorporation; or
    - (2) May not be incorporated under this chapter.
  - e. May not be the same as, or deceptively similar to:
    - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the articles a record that complies with subsection 3, of:
      - (a) Another corporation;
      - (b) A corporation incorporated or authorized to do business in this state under another chapter of this code;
      - (c) A limited liability company;
      - (d) A limited partnership;
      - (e) A limited liability partnership; or
      - (f) A limited liability limited partnership;
    - (2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
    - (3) A fictitious name registered in the manner provided in chapter 45-11; or

- (4) A trade name registered in the manner provided in chapter 47-25.
2. The secretary of state shall determine whether a corporate name is "deceptively similar" to another name for purposes of this chapter.
3. If the secretary of state determines that a corporate name is "deceptively similar" to another name for purposes of this chapter, then the corporate name may not be used unless there is filed with the articles:
  - a. The written consent of the holder of the rights to the name to which the proposed name has been determined to be deceptively similar; or
  - b. 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.
4. This subsection does not affect the right of a domestic corporation existing on July 1, 1986, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.
5. This section and section 10-19.1-14 do not:
  - a. Abrogate or limit:
    - (1) The law of unfair competition or unfair practices;
    - (2) Chapter 47-25;
    - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks; or
    - (4) Any other rights to the exclusive use of names or symbols; or
  - b. Derogate the common law or the principles of equity.
6. A domestic or foreign corporation that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought to be used:
  - a. Was incorporated, organized, formed, or registered under the laws of this state;
  - b. Is authorized to transact business or conduct activities in this state;
  - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

- d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
  - e. Holds a trade name registered in the manner provided in chapter 47-25.
7. The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence. However, 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.
  8. A corporation whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 10-19.1-146 may reacquire the right to use that name by refiling articles of incorporation pursuant to section 10-19.1-11, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment as provided in subsection 2. A corporation that cannot reacquire the use of its corporate name shall adopt a new corporate name that complies with the provisions of this section:
    - a. By refiling articles of incorporation pursuant to section 10-19.1-11;
    - b. By amending pursuant to section 10-19.1-17; or
    - c. By reinstating pursuant to section 10-19.1-146.
  9. Subject to section 10-19.1-133, this section applies to any foreign corporation transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.
  10. An amendment that only changes the name of the corporation may be authorized by a resolution approved by the board and may, but need not, be submitted to and approved by the shareholders as provided in section 10-19.1-18.

**SECTION 7. AMENDMENT.** Section 10-19.1-23 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-23. Filing articles of amendment.** An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to law and all fees have been paid as provided under section 10-19.1-147, the articles of amendment must be recorded in the office of the secretary of state. A corporation that amends the corporate name and is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the corporation's name in each registration when the corporation files an amendment.

**SECTION 8. AMENDMENT.** Subsection 2 of section 10-19.1-39 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~As provided in article XII of the Constitution of North Dakota. Unless otherwise provided in the articles, and except as provided in subsection 4 of section 10-19.1-41,~~ 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:
  - a. The presiding officer at the meeting shall announce, before the election of directors, that shareholders may cumulate their votes; and
  - b. 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.

**SECTION 9. AMENDMENT.** Section 10-19.1-41 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-41. Nonjudicial 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~~ Except as provided in subsection 4, any 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~~ a majority of the voting power of ~~the all 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~~ entitled to vote at an election of directors. However, if a director, whenever the holders of the has been elected solely by the holders of a class or series of shares, as stated in the articles or bylaws, then that director may be removed only by the affirmative vote of the holders of a majority of the voting power of all shares of any that class are or series 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 vote at an election of that director.

4. New directors may be elected at a meeting at which directors are In a corporation having cumulative voting, unless the entire board is removed simultaneously, a director is not removed from the board if there are cast against removal of the director the votes of a proportion of the voting power sufficient to elect the director at an election of the entire board under cumulative voting.
5. New directors may be elected at a meeting at which directors are removed. If the corporation allows cumulative voting and if a shareholder notifies the presiding officer at any time prior to the election of new directors of interest to cumulate the votes of the shareholders, then the presiding officer shall announce before the election that cumulative voting is in effect and shareholders shall cumulate their votes as provided in subdivision b of subsection 2 of section 10-19.1-39.

**SECTION 10.** A new subsection to section 10-19.1-48 of the North Dakota Century Code is created and enacted as follows:

Unless otherwise provided in the articles, the bylaws, or the resolution of the board establishing the committee, a committee may create one or more subcommittees, each consisting of one or more members of the committee, and may delegate to a subcommittee any or all of the authority of the committee. In this chapter, unless the language or the context clearly indicates that a different meaning is intended:

- a. Any reference to a committee is deemed to include a subcommittee; and
- b. Any reference to a committee member is deemed to include a subcommittee member.

**SECTION 11. AMENDMENT.** Subsection 3 of section 10-19.1-61 of the North Dakota Century Code is amended and reenacted as follows:

3. Subject to any restrictions in the articles, the power granted in subsection 2 may be exercised by a resolution approved by the directors as required under section 10-19.1-46 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. ~~Any of the rights and preferences of a class or series established in the articles or by resolution of the directors:~~
  - a. ~~May be made dependent upon facts ascertainable outside the articles or outside the resolution or resolutions establishing the class or series, provided that the manner in which the facts operate upon the rights and preferences of the class or series is clearly and expressly set forth in the articles or in the resolution or resolutions establishing the class or series; and~~
  - b. ~~May incorporate by reference any of the terms of any agreements, contracts, or other arrangements entered into by the issuing corporation in connection with the establishment of the class or~~

series if the corporation retains at the principal executive office, a copy of the agreements, contracts, or other arrangements or portions incorporated by reference.

**SECTION 12. AMENDMENT.** Section 10-19.1-63 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-63. Consideration for shares - Value and payment - Liability.**

1. ~~Subject to article XII of the Constitution of North Dakota, consideration~~ 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 is received by the corporation, the shares are considered fully paid and nonassessable. Neither promissory notes nor future services constitute payment or part payment for shares of a corporation.
2. Subject to any restrictions in the articles, a corporation may, without any new or additional consideration, ~~a corporation may~~ issue the ~~corporation's~~ its own shares in exchange for or in conversion of ~~the corporation's~~ its outstanding shares, or ~~may~~, subject to authorization of share dividends, divisions, and combinations according to section 10-19.1-61.1, issue ~~the corporation's~~ its own shares pro rata to ~~the corporation's~~ shareholders or the shareholders of one or more classes or series, to effectuate share dividends, divisions, or combinations. ~~Shares~~ No shares of a class or series, shares of which are then outstanding, ~~may not~~ shall be issued to the holders of shares of another class or series, except in exchange for or in conversion of outstanding shares of the other class or series, unless the issuance 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.
3. 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. Unless otherwise required by the articles, the consideration may be less than the par value, if any, of the shares. 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~~ subsection, 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.



4. A corporation may issue only shares that are nonassessable or that are assessable but are issued with the unanimous consent of the shareholders. "Nonassessable" shares are 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, then 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.
5. A pledgee or holder of any other security interest in all or any shares that have been issued in violation of subsection 4 is not liable under subdivision b of subsection 4 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.
6. A pledgee, holder of any other security interest, or legal representative is liable under subdivision b of subsection 4 only in that capacity. The liability of the person under subdivision a of subsection 4 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 4.
7. Each person liable under subdivision b of subsection 4 has a full right of contribution on an equitable basis from all other persons liable under that subdivision for the same transaction.
8. An action may not be maintained against a person under subdivision b of subsection 4 unless commenced within two years from the date on which shares are issued in violation of subsection 4.

**SECTION 13. AMENDMENT.** Subsection 1 of section 10-19.1-65 of the North Dakota Century Code is amended and reenacted as follows:

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~~ Unless denied or limited in the articles or by the board pursuant to subdivision b of subsection 2 of section 10-19.1-61, a shareholder of a corporation has the preemptive rights provided in this section.

**SECTION 14. AMENDMENT.** Subsection 6 of section 10-19.1-66 of the North Dakota Century Code is amended and reenacted as follows:

6. Unless uncertificated shares are prohibited by the articles or bylaws, a ~~resolution approved by the affirmative vote of a majority of the directors present~~ corporation may provide that some or all of any or all classes and series of the corporation's shares will be uncertificated shares.
  - a. ~~The resolution~~ action by the corporation provided in this subsection does not apply to shares represented by a certificate until the certificate is surrendered to the corporation.
  - b. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the new shareholder the information required by this section to be stated on certificates.
  - c. The information required under this section is not required to be sent to the new shareholder by a publicly held corporation that adopted a system of issuance, recordation, and transfer of the corporation's shares by electronic or other means not involving the issuance of certificates if the system complies with federal law.
  - d. Except as otherwise expressly provided by statute, the rights and obligations of the holders of certificated and uncertificated shares of the same class and series are identical.

**SECTION 15. AMENDMENT.** Section 10-19.1-69 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-69. Liability of subscribers and shareholders with respect to shares.**

1. 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. As such, a shareholder is not personally liable for the acts or debts of the corporation.
2. 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.

3. 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.
4. No pledgee or other holder of shares as collateral security is personally liable as a shareholder.

**SECTION 16.** Section 10-19.1-74.1 of the North Dakota Century Code is created and enacted as follows:

**10-19.1-74.1. Contractual requirement to submit matter to shareholders.**

A corporation may agree to submit a matter to its shareholders whether or not the board determines, at any time after approving the matter, that the matter is no longer advisable and recommends that the shareholders reject it.

**SECTION 17. AMENDMENT.** Subsection 1 of section 10-19.1-75 of the North Dakota Century Code is amended and reenacted as follows:

1. If the articles so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, by the shareholders who own voting power equal to the voting power that would be required to take the same action at a meeting of the shareholders at which all shareholders were present. However, in no event may written action be taken by holders of less than a majority of the voting power of all shares entitled to vote on that action.
  - a. After the adoption of the initial articles, an amendment to the articles to permit written action to be taken by less than all shareholders requires the approval of all of the shareholders entitled to vote on the amendment.
  - b. When written action is permitted to be taken by less than all shareholders, all shareholders must be notified of its text and effective date no later than five days after the effective time of the action.
  - c. Failure to provide the notice does not invalidate the written action.
  - d. A shareholder who does not sign or consent to the written action has no liability for the action or actions taken by the written actions.

**SECTION 18. AMENDMENT.** Subsection 1 of section 10-19.1-76.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Shares of a corporation registered in the name of another domestic or foreign corporation may be voted by the president or other legal representative of the domestic or foreign corporation.

**SECTION 19. AMENDMENT.** Subsection 2 of section 10-19.1-84 of the North Dakota Century Code is amended and reenacted as follows:

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;
- i. Shareholder control agreements described in section 10-19.1-83; and
- j. A copy of agreements, contracts, or other arrangements or portions of them incorporated by reference under subsection ~~3 8~~ of section ~~40-19.1-64~~ 10-19.1-10.

**SECTION 20. AMENDMENT.** Section 10-19.1-87 of the North Dakota Century Code is amended and reenacted as follows:

**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. Unless otherwise provided in the articles, an amendment of the articles that materially and adversely affects the rights or preferences of the shares of a dissenting shareholder in that it:
    - (1) Alters or abolishes a preferential right of the shares;
    - (2) Creates, alters, or abolishes a right in respect of the redemption of the shares, including a provision respecting a sinking fund for the redemption or repurchase of shares;
    - (3) Alters or abolishes a preemptive right of the holder of the shares to acquire shares, securities other than shares, or rights to purchase shares or securities other than shares;
    - (4) Excludes or limits the right of a shareholder to vote on a matter, or to accumulate votes, except as the right may be

excluded or limited through the authorization or issuance of securities of an existing or new class or series with similar or different voting rights; or

- (5) Eliminates the right to obtain payment under this subdivision;
  - b. A sale, lease, transfer, or other disposition of property and assets of the corporation that requires shareholder approval under subsection 2 of section 10-19.1-104, but not including:
    - (1) A disposition in dissolution described in subsection 2 of section 10-19.1-109;
    - (2) A disposition pursuant to an order of a court; or
    - (3) 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;
  - c. A plan of merger to which the corporation is a constituent organization, except as provided in subsection 3 and except for a plan of merger adopted under section 10-19.1-100.1;
  - d. A plan of exchange, whether under this chapter or under ~~chapter 10-32~~ its governing statute in the case of another organization, to which the corporation is a constituent organization as the corporation whose shares will be acquired by the acquiring ~~corporation~~ organization, except as provided in subsection 3;
  - e. A plan of conversion adopted by a corporation; or
  - f. 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. Unless the articles, the bylaws, or a resolution approved by the board otherwise provide, the right to obtain payment under this section does not apply to the shareholders of:

- a. The surviving corporation in a merger with respect to shares of the shareholders that are not entitled to be voted on the merger and are not canceled or exchanged in the merger; or
  - b. The corporation whose shares will be acquired by the acquiring ~~corporation~~ organization in a plan of exchange with respect to shares of the shareholders that are not entitled to be voted on the plan of exchange and are not exchanged in the plan of exchange.
4. The shareholders of a corporation who have a right under this section to obtain payment for their shares, or who would have the right to obtain payment for their shares absent the exception set for in subsection 6, 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.
  5. If a date is fixed according to subsection 1 of section 10-19.1-73.2 for the determination of shareholders entitled to receive notice of and to vote on an action described under subsection 1, only shareholders as of the date fixed and beneficial owners as of the date fixed who hold through shareholders, as provided in subsection 2, may exercise dissenters' rights.
  6. Notwithstanding subsection 1, the right to obtain payment under this section, other than in connection with a plan of merger adopted under section 10-19.1-100, is limited in accordance with the following provisions:
    - a. The right to obtain payment under this section is not available for the holders of shares of any class or series of shares that is listed on the New York stock exchange or the American stock exchange or designated as a national market ~~system~~ security on ~~an interdealer quotation system by the national association of securities dealers, incorporated~~ the nasdaq stock market.
    - b. The applicability of subdivision a is determined as of:
      - (1) The record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action described in subsection 1; or
      - (2) The day before the effective date of corporate action described in subsection 1 if there is no meeting of shareholders.
    - c. Subdivision a is not applicable, and the right to obtain payment under this section is available pursuant to subsection 1, for the holders of any class or series of shares who are required by the terms of the corporate action described in subsection 1 to accept for such shares anything other than shares, or cash in lieu of fractional shares, of any class or any series of shares of the domestic or foreign corporation, or any other proprietary ownership interest of any other entity organization, that satisfies the standards

set forth in subdivision a at the time the corporate action becomes effective.

**SECTION 21. AMENDMENT.** Subsection 1 of section 10-19.1-93 of the North Dakota Century Code is amended and reenacted as follows:

1. A corporation may acquire its own shares, subject to section 10-19.1-92.
  - a. If a corporation acquires its own shares, then any of the acquired shares that are not pledged by the corporation as security for the future payment of some or all of the purchase price for the shares constitute authorized but unissued shares of the corporation, unless the articles provide that they may not be reissued. If the articles prohibit reissue, the number of authorized shares is reduced by the number of shares acquired.
  - b. If a corporation pledges acquired shares as security for future payment of all or part of the purchase price for the shares and reissues the pledged shares in its own name, then:
    - (1) The shares must continue to be issued and outstanding except for voting and determination of a quorum, and the shares are not considered to be present and entitled to vote at any meeting of shareholders;
    - (2) The corporation may not vote or exercise any other rights of a shareholder with respect to the pledged shares, but the pledgee shall have any rights, other than the right to vote, with respect to the shares which the pledgee is entitled to by contract;
    - (3) If the pledge is foreclosed, the corporation shall reissue and deliver the pledged shares to or at the direction of the pledgee; and
    - (4) Shares that are released from a pledge have the status specified in subdivision a.

**SECTION 22. AMENDMENT.** Section 10-19.1-96 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-96. Merger - Exchange - Transfer.**

1. With or without a business purpose, a corporation may merge with:
  - a. ~~Another domestic corporation under a plan of merger approved in the manner provided in sections 10-19.1-97 through 10-19.1-103.~~
  - b. ~~A limited liability company under a plan of merger approved in the manner provided in sections 10-32-101 through 10-32-106.~~
  - e. A foreign corporation or foreign limited liability company under a plan of merger in the manner provided in section 10-19.1-103 another domestic or foreign organization under a plan of merger approved in the manner provided in this section and in sections

10-19.1-97 through 10-19.1-103 and in the manner provided in the governing statute of the other organization.

2. With respect to an exchange:
  - a. A corporation may acquire all the ownership interests of one or more classes or series of another domestic ~~corporation~~ or foreign organization under a plan of exchange approved in the manner provided in this section and in sections 10-19.1-97 through 10-19.1-103 in the case of a domestic corporation and in the manner provided in the governing statute in the case of any other organization.
  - b. A ~~corporation~~ may acquire all the ownership interests of one or more classes or series of a ~~limited liability company~~ under a plan of exchange approved in the manner provided in ~~sections 10-32-101 through 10-32-106.~~
  - c. A ~~limited liability company~~ Another domestic or foreign organization may acquire all the ~~ownership interests~~ shares of one or more classes or series of a corporation under a plan of exchange approved in the manner provided in this section and in sections 10-19.1-97 through 10-19.1-103 and ~~chapter 10-32~~ in the case of a domestic corporation and in the manner provided in the governing statute in the case of any other organization.
  - d. A ~~foreign corporation or foreign limited liability company~~ may acquire all the ownership interests of one or more classes or series of a corporation under a plan of exchange approved in the manner provided in ~~section 10-19.1-103.~~
3. A corporation may sell, lease, transfer, or otherwise dispose of all or substantially all of the corporation's property and assets in the manner provided in section 10-19.1-104.
4. A corporation may participate in a merger or exchange ~~with a limited liability company~~ only as permitted by this section and by sections 10-19.1-97 through 10-19.1-103. The dissenter's rights for shareholders of a corporation are governed by this chapter.

**SECTION 23. AMENDMENT.** Section 10-19.1-97 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-97. Plan of merger or exchange.**

1. A plan of merger or exchange must contain:
  - a. The name of the corporation and of each other constituent organization proposing to merge or participate in an exchange and:
    - (1) In the case of a merger, the name of the surviving organization; or
    - (2) In the case of an exchange, the name of the acquiring organization;



- b. The terms and conditions of the proposed merger or exchange;
  - c. The manner and basis for converting or exchanging ownership interests:
    - (1) In the case of a merger, the manner and basis of converting the ownership interests of the constituent organizations into securities of the surviving organization or of any other organization or, in whole or in part, into money or other property; or
    - (2) In the case of an exchange, the manner and basis of exchanging the ownership interests to be acquired for securities of the acquiring organization or any other organization or, in whole or in part, into money or other property;
  - d. In the case of a merger, a statement of any amendments to the articles of incorporation or articles of organization originating records of the surviving organization proposed as part of the merger; and
  - e. Any other provisions with respect to the proposed merger or exchange which are deemed necessary or desirable.
2. This section does not limit the power of a corporation to acquire all or part of the ownership interests of one or more classes or series of ~~another~~ any other organization through a negotiated agreement with the owners or otherwise.

**SECTION 24. AMENDMENT.** Section 10-19.1-98 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-98. Plan approval.**

1. A resolution containing the plan of merger or exchange must be approved by the governing ~~board~~ body as required by section 10-19.1-46 in the case of a domestic corporation, or ~~40-32-83~~ by the governing statute of each other constituent organization and must then be submitted at a regular or special meeting to the owners of each constituent organization, in the case of a plan of merger or the constituent organization whose ownership interests will be acquired by the acquiring constituent organization in the exchange, in the case of a plan of exchange. ~~The plan of merger or exchange may require that it be submitted to the shareholders whether or not the board determines at any time after the board's initial approval of the plan that the plan is no longer advisable and recommends that the shareholders reject it.~~ If owners owning any class or series of ownership interests in a constituent organization are entitled to vote on the plan of merger or exchange under this subsection, then written notice must be given to every owner of that constituent organization, whether or not entitled to vote at the meeting, not less than fourteen days nor more than sixty days before the meeting, in the manner provided in section 10-19.1-73 for notice of meetings of shareholders in the case of a domestic corporation ~~and, or in the manner provided in section 40-32-40 in the case of a limited liability company~~ its governing statute in the case of

each other constituent organization. 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 owners 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 ownership interests entitled to vote. Except as provided in subsection 3, a class or series of ~~shares ownership interests of the corporation~~ constituent organization 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 of incorporation, or a member-control agreement, entitle the class or series of ownership interests to vote as a class or series and, in the case of an exchange, if the class or series is included in the exchange.
3. A class or series of ownership interests of the constituent organization is not entitled to vote as a class or series ~~solely because the plan of merger or exchange affects a cancellation or exchange of ownership interests of the class or series~~ if the plan of merger or exchange affects a cancellation or exchange of all ownership interests of the constituent organization of all classes and series that are outstanding immediately before the merger or exchange and owners of ownership interests of that class or series are entitled to obtain payment for the fair value of their ownership interests under section 10-19.1-87, or would have the right to obtain payment for their ownership interests absent the exception set forth in subsection 6 of section 10-19.1-87, in the case of a domestic corporation, or 10-32-54 under its governing statute in the case of any other organization in the event of the merger or exchange.
4. Notwithstanding subsections 1 and 2, submission of a plan of merger or exchange to a vote at a meeting of owners of a surviving constituent organization is not required if:
  - a. The articles will not be amended in the transaction;
  - b. Each owner of ownership interests in the constituent organization which were outstanding immediately before the effective date of the transaction will hold the same number of ownership interests with identical rights immediately after the effective date;
  - c. The voting power of the outstanding ownership interests of the constituent organization entitled to vote immediately after the merger or exchange, plus the voting power of the ownership interests of the constituent organization entitled to vote issuable on conversion of, or on the exercise of rights to purchase, securities issued in the transaction, will not exceed by more than twenty percent the voting power of the outstanding ownership interests of the constituent organization entitled to vote immediately before the transaction; and
  - d. The number of participating ownership interests of the constituent organization immediately after the merger, plus the number of participating ownership interests of the constituent organization issuable on conversion of, or on the exercise of rights to purchase,

securities issued in the merger, will not exceed by more than twenty percent the number of participating ownership interests of the constituent organization immediately before the merger. "Participating ownership interests" are outstanding ownership interests of the constituent organization which entitle their owners to participate without limitation in distributions by the constituent organization.

5. If the merger or exchange is with an organization other than a domestic limited liability company corporation, the plan of merger or exchange must also be approved in the manner provided in ~~chapter 10-32~~ the governing statute of the other organization.

**SECTION 25. AMENDMENT.** Subsection 1 of section 10-19.1-99 of the North Dakota Century Code is amended and reenacted as follows:

1. Upon receiving the approval required by section 10-19.1-98, articles of merger must be prepared which contain:
  - a. The plan of merger; and
  - b. A statement that the plan is approved by each constituent organization under this chapter 10-19.4 or 10-32 under its governing statute in the case of any other organization.

**SECTION 26. AMENDMENT.** Section 10-19.1-100 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-100. Merger of subsidiary into parent.**

1. A If either the parent or the subsidiary is a domestic organization, then a parent that is a domestic or foreign organization owning at least ninety percent of the outstanding ownership interests of each class and series of a subsidiary that is a domestic or foreign organization directly, or indirectly through related organizations other than classes or series that, absent this section, would otherwise not be entitled to vote on the merger:
  - a. May merge the subsidiary into the parent or into any other subsidiary at least ninety percent of the outstanding ownership interests of each class and series of which is owned by the parent directly, or indirectly through related organizations other than classes or series that, absent this section, would otherwise not be entitled to vote on the merger, without a vote of the owners of the parent or any subsidiary; or
  - b. May merge the parent, or the parent and one or more subsidiaries into one of the subsidiaries under this section.
2. A resolution approved by the present directors of the parent as required by section 10-19.1-46 in the case of a domestic corporation or of the present members of the governing body of the parent as required by its governing statute in the case of any other organization must set forth a plan of merger that contains:

- a. The name of the subsidiary or subsidiaries, the name of the parent, and the name of the surviving constituent organization;
  - b. The manner and basis of converting the ownership interests of the subsidiary or subsidiaries or the parent into securities or ownership interests of the parent, of the subsidiary, or of another organization; or, in whole or in part, into money or other property;
  - c. If the parent is a constituent organization but is not the surviving constituent organization in the merger, a provision for the pro rata issuance of ownership interests of the surviving constituent organization to the owners of ownership interests of the parent on surrender of any ownership interests of the parent; and
  - d. If the surviving constituent organization is a subsidiary, a statement of any amendments to the articles of the surviving constituent organization that will be part of the merger.
3. # Notwithstanding subsection 1:
- a. If the parent is a domestic corporation and the conditions of subsection 4 of section 10-19.1-98 are not met with respect to the parent, then the resolution is not effective unless it is approved by the affirmative vote of the holders of a majority of the voting power of all shares of the parent entitled to vote at a regular or special meeting held in accordance with section 10-19.1-98; and
  - b. If the parent is a domestic or foreign organization and is not the surviving organization in the merger, then the resolution is not effective unless it is also approved in the manner provided in the governing statute of the parent.
4. Notwithstanding subsection 3, if the parent is a constituent organization and is the surviving organization in the merger, it may change its corporate name, without a vote of its owners, by the inclusion of a provision to that effect in the resolution of merger setting forth the plan of merger that is approved by the affirmative vote of a majority of the board members of the parent present. Upon the effective date of the merger, the name of the parent must be changed.
4. ~~If the parent is a constituent organization but is not the surviving constituent organization in a merger, the resolution is not effective unless the resolution is also approved by the affirmative vote of the holders of a majority of the voting power of all ownership interests of the parent entitled to vote at a regular or special meeting held in accordance with section 10-19.1-98 if the parent is a domestic corporation, section 10-32-102 if the parent is a limited liability company, or in accordance with the laws of the jurisdiction under which the parent is incorporated or organized if the parent is a foreign corporation or foreign limited liability company.~~
5. ~~Notice~~ If the subsidiary is a domestic organization, then notice of the action, including a copy of the plan of merger must be given to each owner, other than the parent and any subsidiary, of each subsidiary that is a constituent organization in the merger before, or within ten days after, the effective date of the merger.

6. Articles of merger must be prepared which contain:
  - a. The plan of merger;
  - b. The number of outstanding ownership interests of each class and series of the subsidiary that is a constituent organization in the merger, other than the classes or series that, absent this section, would otherwise not be entitled to vote on the merger, and the number of ownership interests of each class and series owned, other than the classes or series that, absent this section, would otherwise not be entitled to vote on the merger, by the parent directly, or indirectly through related constituent organizations; and
  - c. A statement that the plan of merger is approved by the parent under this section.
7. The articles of merger must be signed on behalf of the parent and filed with the secretary of state, with the fees provided in section 10-19.1-147.
8. The secretary of state shall issue a certificate of merger to the surviving constituent organization or the legal representative of the surviving constituent organization's legal representative organization. The certificate must contain the effective date of the merger.
9. If all of the ownership interests of one or more domestic subsidiaries that is a constituent organization to a merger under this section are not owned by the parent directly, or indirectly through related constituent organizations, immediately before the merger, then the owners of each domestic subsidiary which is either a limited liability company or a corporation, have dissenter's rights under section 10-19.1-87 or 10-32-54, without regard to subsection 3 of section 10-19.1-87 or subsection 2 of section 10-32-54, and under section 10-19.1-88 or 10-32-55.
  - a. If the parent is a constituent organization but is not the surviving organization in the merger, the articles of incorporation or articles of organization of the surviving organization immediately after the merger differ from the articles of incorporation or articles of organization of the parent immediately before the merger in a manner that would entitle an owner of the parent to dissenter's rights under subdivision a of subsection 1 of section 10-19.1-87 or under subdivision a of subsection 1 of section 10-32-54, and the articles of incorporation or articles of organization of the surviving constituent organization constitute an amendment to the articles of incorporation or articles of organization of the parent, then that owner of the parent has dissenter's rights as provided under section 10-19.1-87 or 10-32-54.
  - b. Except as provided in this subsection, sections 10-19.1-87 and 10-32-54 do not apply to any merger affected under this section.
10. A merger among a parent and one or more subsidiaries or among two or more subsidiaries of a parent may be accomplished under sections 10-19.1-97 through 10-19.1-99 instead of this section, in which case this section does not apply.

**SECTION 27. AMENDMENT.** Subsection 1 of section 10-19.1-100.1 of the North Dakota Century Code is amended and reenacted as follows:

1. For purposes of this section:
  - a. "Holding company" means the corporation that is or becomes the direct parent of the surviving corporation of a merger accomplished under this section.
  - b. "Parent constituent corporation" means the parent corporation that merges with or into the subsidiary constituent corporation.
  - c. "Subsidiary constituent corporation" means the subsidiary corporation that the parent constituent corporation merges with or into in the merger.

**SECTION 28. AMENDMENT.** Section 10-19.1-101 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-101. Abandonment of plan of merger or exchange.**

1. After a plan of merger or exchange is approved by the owners entitled to vote on the approval of the plan as provided in section 10-19.1-98 and before the effective date of the plan, the plan may be abandoned:
  - a. With respect to the approval of the abandonment:
    - (1) If the owners of the ownership interests of each of the constituent organizations entitled to vote on the approval of the plan as provided in section 10-19.1-98 have approved the abandonment at a meeting by the affirmative vote of the owners of a majority of the voting power of the ownership interests entitled to vote;
    - (2) If the owners of a constituent organization are not entitled to vote on the approval of the plan under section 10-19.1-98, the governing ~~board~~ body of the constituent organization has approved the abandonment by the affirmative vote required by section 10-19.1-46 ~~or 10-32-83~~ in the case of a domestic corporation or by its governing statute in the case of any other organization; and
    - (3) If the merger or exchange is with a foreign ~~corporation or limited liability company~~ organization, then if abandonment is approved in the manner as may be required by the ~~laws of the jurisdiction under which the corporation is incorporated or the limited liability company is organized~~ governing statute of the foreign organization;
  - 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 are not filed with the secretary of state and the plan is to be abandoned or if a plan of exchange is to be abandoned before

the effective date of the plan, then a resolution by the governing body of any constituent organization abandoning the plan of merger or exchange may be approved by the affirmative vote of the governing ~~board~~ body required by section 10-19.1-46 or ~~10-32-83~~ in the case of a domestic corporation or by its governing statute in the case of any other organization, subject to the contract rights of any other person under the plan.

3. If articles of merger are filed with the secretary of state, but are not yet effective, the constituent organizations, in the case of abandonment under paragraph 1 of subdivision a of subsection 1, then the constituent organization or any one of them under paragraph 2 of subdivision a of subsection 1, as the abandoning constituent organization in the case of abandonment under subsection 2, shall file with the secretary of state, with the fees provided in section 10-19.1-147, articles of abandonment that contain:
  - a. The names of the constituent organizations;
  - 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.
4. If the certificate of merger is issued, then the ~~board~~ governing body shall surrender the certificate to the secretary of state upon filing the articles of abandonment.

**SECTION 29. AMENDMENT.** Subsection 2 of section 10-19.1-102 of the North Dakota Century Code is amended and reenacted as follows:

2. When a merger becomes effective:
  - a. The constituent organizations become a single entity, the surviving ~~corporation or the surviving limited liability company, as the case may be~~ organization.
  - b. The separate existence of all constituent organizations except the surviving organization ceases.
  - c. As to any corporation that was a constituent organization and is not the surviving constituent organization, the articles of merger serve as articles of termination, and unless previously filed, the notice of dissolution.
  - d. ~~As to rights, privileges, powers, duties, and liabilities:~~
    - (1) ~~If the surviving organization is a limited liability company, the~~ The surviving ~~limited liability company~~ organization has all the rights, privileges, immunities, and powers and is subject to all of the duties and liabilities of a domestic limited liability company the specified organization under its governing statute.

- (2) ~~If the surviving organization is a corporation, 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.~~
- e. The surviving organization possesses all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the constituent organizations.
- (1) All property and all debts due on any account, including subscriptions to ~~shares ownership interests~~ and all other choses in action, and every other interest of or belonging to or due to each of the constituent organizations vests in the surviving organization without any further act or deed.
- (2) Confirmatory deeds, assignments, or similar instruments to accomplish that vesting may be signed and delivered at any time in the name of a constituent organization by the organization's current officers ~~or~~, managers, or governing body, as the case may be, or, if the organization no longer exists, by the ~~organization's last officers or~~, managers, or governing body of the organization.
- (3) The title to any real estate or any interest vested in any of the constituent organizations does not revert nor in any way become impaired by reason of the merger.
- f. The surviving organization is responsible and liable for all the liabilities and obligations of each of the constituent organizations.
- (1) A claim of or against or a pending proceeding by or against a constituent organization may be prosecuted as if the merger did not take place, or the surviving organization may be substituted in the place of the constituent organization.
- (2) Neither the rights of creditors nor any liens upon the property of a constituent organization are impaired by the merger.
- g. The articles of ~~incorporation or articles of organization, as the case may be,~~ of the surviving organization are deemed to be amended to the extent that changes in its articles, if any, are contained in the plan of merger.

**SECTION 30. AMENDMENT.** Section 10-19.1-102.1 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-102.1. Continuance of corporate authority.** When an act or record is considered necessary or appropriate to evidence the vesting of property or other rights in the single corporation, the persons with authority to do so under the articles ~~or~~, bylaws, or member-control agreement of each constituent organization shall do the act ~~or~~ sign and deliver the record and for this purpose, the existence of the constituent organizations and the authority of those persons is continued.



<sup>47</sup> **SECTION 31. AMENDMENT.** Section 10-19.1-103 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-103. Merger or exchange with foreign corporation or foreign limited liability company organization.**

1. A domestic corporation may merge with, including a merger pursuant to section 10-19.1-100, or participate in an exchange with a foreign ~~corporation or foreign limited liability company organization~~ by following the procedures set forth in this section, if:
  - a. With respect to a merger, the merger is permitted by ~~the laws of the jurisdiction under which the foreign corporation or foreign limited liability company is incorporated or organized~~ its governing statute.
  - b. With respect to an exchange, the constituent organization whose ownership interests will be acquired is a domestic ~~corporation or limited liability company organization~~, regardless of whether the exchange is permitted by ~~the laws of the jurisdiction under which the foreign corporation or foreign limited liability company is incorporated or organized~~ its governing statute.
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 ownership interests and each foreign ~~corporation or foreign limited liability company organization~~ shall comply with the applicable provisions of ~~the laws of the jurisdiction under which it was incorporated or organized or by which it is governed~~ its governing statute.
3. If the surviving organization in a merger will be a domestic corporation, then the organization shall comply with this chapter.
4. If the surviving organization in a merger will be a foreign ~~corporation or foreign limited liability company organization~~ and will transact business in this state, then the organization shall comply with the provisions of ~~this chapter with respect to foreign corporations or chapter 10-32 with respect to foreign limited liability companies~~ its governing statute. In every case, the surviving foreign ~~corporation or foreign limited liability company organization~~ 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 organization and in a proceeding for the enforcement of the rights of a dissenting owner of an ownership interest of a constituent organization against the surviving foreign ~~corporation or foreign limited liability company organization~~;
  - b. An irrevocable appointment of the secretary of state as the ~~organization's agent~~ of the organization to accept service of

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<sup>47</sup> Section 10-19.1-103 was also amended by section 15 of Senate Bill No. 2153, chapter 99.

process in any proceeding, and an address to which process may be forwarded; and

- c. An agreement that the organization will promptly pay to the dissenting owners of ownership interests of each domestic constituent ~~corporation and domestic constituent limited liability company~~ organization the amount, if any, to which they are entitled under ~~section 10-19.1-88 or 10-32-55~~ its governing statute.

**SECTION 32. AMENDMENT.** Section 10-19.1-104 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-104. Transfer of assets - When permitted.**

1. A corporation, by affirmative vote of a majority of the directors present 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, and without shareholder approval, may:
  - a. 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;
  - b. 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; or
  - c. Transfer any or all of its property to ~~a corporation~~ an organization all the ~~shares~~ ownership interests of which are owned by the corporation.
2. With respect to shareholders' approval:
  - a. 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.
    - (1) Written notice of the meeting must be given to all shareholders whether or not they are entitled to vote at the meeting.
    - (2) 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.
  - b. Shareholder approval is not required under subdivision a if, following the sale, lease, transfer, or other disposition of its

property and assets, the corporation retains a significant continuing business activity. The corporation will conclusively be deemed to have retained a significant continuing business activity if the corporation retains a business activity that represented at least:

- (1) Twenty-five percent of the corporation's total assets at the end of the most recently completed fiscal year; and
  - (2) Twenty-five percent of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, measured on a consolidated basis with its subsidiaries for each of paragraphs 1 and 2.
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. A disposition of all or substantially all of the property and assets of the corporation under this section is not considered to be a merger or a de facto merger pursuant to this chapter or otherwise. The transferee shall not be liable solely because it is deemed to be a continuation of the transferor.

**SECTION 33. AMENDMENT.** Subsection 2 of section 10-19.1-104.1 of the North Dakota Century Code is amended and reenacted as follows:

2. For the purposes of sections 10-19.1-104.1 through 10-19.1-104.6, unless the context otherwise requires:
  - a. "Act of the board" means action by the board as provided in section 10-19.1-46 whether:
    - (1) At a meeting of the board as provided in section 10-19.1-43; or
    - (2) By a written action of the board as provided in section 10-19.1-47.
  - b. "Act of the governing body" means action by the governing body of any organization, other than a domestic corporation, in the manner provided in the governing statute.
  - c. "Act of the owners" means action by the owners of an organization, other than a domestic corporation, in the manner provided in its governing statute.
  - d. "Act of the shareholders" means action by the shareholders as provided in section 10-19.1-74 whether:
    - (1) At a meeting of the shareholders as provided in sections 10-19.1-71 and 10-19.1-72; or

- (2) By a written action of the shareholders as provided in section 10-19.1-75.

~~e.~~ e. "Certificate of creation" means:

- (1) A certificate of incorporation, if the converted organization is a corporation deemed to be incorporated under this chapter;
- (2) A certificate of organization, if the converted organization is a limited liability company deemed to be organized under chapter 10-32;
- (3) A certificate of limited partnership, if the converted organization is a limited partnership deemed to be formed under chapter 45-10.2;
- (4) The filed registration of a limited liability partnership, if the converted organization is a limited liability partnership deemed to be established under chapter 45-22; or
- (5) A certificate of limited liability limited partnership, if the converted organization is a limited liability limited partnership deemed to be formed under chapter 45-23.

~~d.~~ f. "Date of origin" means the date on which:

- (1) A corporation which is:
  - (a) The converting organization was incorporated; or
  - (b) The converted organization is deemed to be incorporated;
- (2) A limited liability company which is:
  - (a) The converting organization was organized; or
  - (b) The converted organization is deemed to be organized;
- (3) A general partnership that is the converting organization was formed;
- (4) A limited partnership which is:
  - (a) The converting organization was formed; or
  - (b) The converted organization is deemed to be formed;
- (5) A limited liability partnership which is:
  - (a) The converting organization was formed; or
  - (b) The converted organization is deemed to be formed;  
and

- (6) A limited liability limited partnership which is:
  - (a) The converting organization was formed; or
  - (b) The converted organization is deemed to be formed.
- e. g. "Filed registration" means the registration of a limited liability partnership which has been filed with the secretary of state.
- f. h. "General partnership" means an organization formed under chapters 45-13 through 45-21.
- g. i. "Organizational records" means for an organization which is:
  - (1) A corporation, its articles of incorporation and bylaws;
  - (2) A limited liability company, its articles of organization, operating agreement or bylaws, and any member-control agreement;
  - (3) A limited partnership, its partnership agreement;
  - (4) A limited liability partnership, its partnership agreement; or
  - (5) A limited liability limited partnership, its partnership agreement.
- h. "~~Originating records~~" means for an organization which is:
  - (1) ~~A corporation, its articles of incorporation;~~
  - (2) ~~A limited liability company, its articles of organization;~~
  - (3) ~~A limited partnership, its certificate of limited partnership;~~
  - (4) ~~A limited liability partnership, its registration; or~~
  - (5) ~~A limited liability limited partnership, its certificate of limited liability limited partnership.~~

**SECTION 34. AMENDMENT.** Subsection 1 of section 10-19.1-110 of the North Dakota Century Code is amended and reenacted as follows:

- 1. If notice to creditors and claimants is given, it must be given by:
  - a. 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; and
  - b. Giving written notice to known creditors and claimants pursuant to subsection ~~35~~ 36 of section 10-19.1-01.

**SECTION 35.** Section 10-19.1-139.1 of the North Dakota Century Code is created and enacted as follows:

**10-19.1-139.1. Foreign corporation - Conversion of foreign corporation authorized to transact business in this state.** If a foreign corporation authorized to transact business in this state converts to another organization permitted by its governing statute, within thirty days after the conversion becomes effective, the newly created organization resulting from the conversion shall file with the secretary of state a certified statement of conversion duly authenticated by the proper officer of the jurisdiction in which the statutory conversion was effected. Any foreign organization that is the converted organization in a conversion and which will continue to transact business in this state shall obtain a certificate of authority or applicable registration in accordance with the North Dakota governing statute applicable to the converted organization.

<sup>48</sup> **SECTION 36. AMENDMENT.** Section 10-19.1-146 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-146. Secretary of state - Annual report of corporations and foreign corporations - Involuntary dissolution - Revocation of certificate of authority.**

1. Each corporation and each foreign corporation authorized to transact business in this state shall file, within the time provided in subsection 3, an annual report setting forth:
  - a. The name of the corporation or foreign corporation and the state or country under the laws of which the corporation or foreign corporation is incorporated.
  - b. The address of the registered office of the corporation or foreign corporation in this state, the name of the corporation's or foreign corporation's registered agent in this state at that address, and the address of the corporation's or foreign corporation's principal executive office.
  - c. A brief statement of the character of the business in which the corporation or foreign corporation is actually engaged in this state.
  - d. The names and respective addresses of the officers and directors of the corporation or foreign corporation.
  - e. A In the case of a domestic or foreign corporation, a statement of the aggregate number of shares the corporation or foreign corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
  - f. A In the case of a domestic or foreign corporation, 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.

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<sup>48</sup> Section 10-19.1-146 was also amended by section 25 of Senate Bill No. 2153, chapter 99.

- g. 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 total gross income of the corporation for the twelve months ending on December thirty-first preceding the date provided under this section for the filing of the annual report and the gross amount accumulated by the corporation at or from places of business in this state. If, on December thirty-first preceding the time provided under this section for the filing of the 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 total gross income must be furnished for the period between the date of incorporation or the date of the corporation's authorization to transact business in this state and December thirty-first.
  - h. Any additional information necessary or appropriate to enable the secretary of state to determine and assess the proper amount of fees payable by the corporation.
2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report except as to the information required by subdivision g of subsection 4 which must be given as of the close of business on December thirty-first next preceding the date herein provided for the filing of the report, or, in the alternative, data of the fiscal year ending next preceding this report may be used. The annual report must be signed as provided in subsection 54 52 of section 10-19.1-01, or the articles or the bylaws or a resolution approved by the affirmative vote of the required proportion or number of the directors or holders of shares entitled to vote. If the corporation or foreign corporation is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or foreign corporation by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years. The secretary of state, or any employee or legal representative of the secretary of state, may not disclose the information reported under subdivision g of subsection 4 to any person, except a person that is verified to be a shareholder of the corporation or foreign corporation, a legal representative of the shareholder for which information is requested, or to the tax commissioner or any employee or legal representative of the tax commissioner, who may not disclose the information and may use the information only for the administration of the tax laws.
3. Except for the first annual report, the annual report must be delivered to the secretary of state:
- a. By a corporation, before August second of each year; and
  - b. By a foreign corporation, before May sixteenth of each year.

The first annual report of either a corporation or foreign corporation must be delivered before the date provided in the year following the calendar year in which the certificate of incorporation or certificate of authority was issued by the secretary of state, or in the case of a corporation, in

the year following the calendar year of the effective date stated in the articles of incorporation. An annual report in a sealed envelope postmarked by the United States postal service before the date provided in this subsection, or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in this subsection, is compliance with this requirement. When the filing date falls on Saturday, Sunday, or other holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day is compliance with this requirement.

4. The secretary of state must file the annual report if the annual report conforms to the requirements of this section and all fees have been paid as provided in section 10-19.1-147.
  - a. If the annual report does not conform, it must be returned to the corporation or foreign corporation for any necessary correction or payment.
  - b. If the annual report is corrected and filed before the date provided in subsection 3, or within thirty days after the annual report was returned by the secretary of state for correction, then the penalties provided in section 10-19.1-147 for the failure to file an annual report within the time provided do not apply.
5. The secretary of state may extend the annual report filing date provided in subsection 3 if a written application for an extension is delivered before the date provided in subsection 3. A corporation or foreign corporation ~~with a fiscal year ending within three months before the date provided in subsection 3~~ may make a written request for an extension, to apply to reports for subsequent years ~~until the fiscal year is changed~~.
6. Three months after the date provided in subsection 3, any corporation or foreign corporation failing to file its annual report is not in good standing. After the corporation or foreign corporation becomes not in good standing, the secretary of state shall notify the corporation or foreign corporation that its certificate of incorporation or certificate of authority is not in good standing and that it may be dissolved or revoked as provided in subsection 7 or 8.
  - a. The secretary of state must mail the notice of impending dissolution or revocation to the last registered agent at the last registered office of record.
  - b. If the corporation or foreign corporation files its annual report after the notice is mailed, together with the filing fee and the late filing penalty fee provided in section 10-19.1-147, then the secretary of state shall restore its certificate of incorporation or certificate of authority to good standing.
7. A corporation that fails to file its annual report, together with the filing and penalty fees for late filing provided in section 10-19.1-147, within one year after the date provided in subsection 3 ceases to exist as a corporation and is considered involuntarily dissolved by operation of law.



- a. 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.
  - b. Notice by the secretary of state must be mailed to the last registered agent at the last registered office of record.
8. A foreign corporation that fails to file its annual report, together with the filing and penalty fees for late filing provided in section 10-19.1-147, within one year after the date provided in subsection 3 forfeits its authority to transact business in this state.
- a. The secretary of state shall note the revocation of the foreign corporation's certificate of authority on the records of the secretary of state and shall give notice of the action to the foreign corporation.
  - b. Notice by the secretary of state must be mailed to the foreign corporation's last registered agent at the last registered office of record.
  - c. The decision by the secretary of state that a certificate of authority must be revoked under this subsection is final.
9. A corporation dissolved for failure to file an annual report, or a foreign corporation whose authority was forfeited by failure to file an annual report, may be reinstated by filing a past-due report, together with the filing and penalty fees for an annual report and a reinstatement fee as provided in section 10-19.1-147. The fees must be paid and an annual report filed within one year following the involuntary dissolution or revocation. Reinstatement under this subsection does not affect the rights or liability for the time from the dissolution or revocation to the reinstatement.

<sup>49</sup> **SECTION 37. AMENDMENT.** Section 10-19.1-147 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-147. Fees for filing records - Issuing certificates - License fees.**

The secretary of state shall charge and collect for:

1. Filing articles of incorporation and issuing a certificate of incorporation, ~~thirty~~ ninety dollars.
2. Filing articles of amendment, twenty dollars.
3. Filing articles of correction, twenty dollars.
4. Filing restated articles of incorporation, thirty dollars.
5. Filing articles of conversion of a corporation, fifty dollars and:

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<sup>49</sup> Section 10-19.1-147 was also amended by section 26 of Senate Bill No. 2153, chapter 99.

- a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
  - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
6. Filing abandonment of conversion, fifty dollars.
  7. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.
  8. Filing articles of abandonment of merger, fifty dollars.
  9. Filing an application to reserve a corporate name, ten dollars.
  10. Filing a notice of transfer of a reserved corporate name, ten dollars.
  11. Filing a cancellation of reserved corporate name, ten dollars.
  12. Filing a consent to use of name, ten dollars.
  13. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.
  14. Filing a statement of change of address of registered office by registered agent, ten dollars for each corporation affected by such change.
  15. Filing a registered agent's consent to serve in such capacity, ten dollars.
  16. Filing a resignation as registered agent, ten dollars.
  17. Filing a statement of the establishment of a series of shares, twenty dollars.
  18. Filing a statement of cancellation of shares, twenty dollars.
  19. Filing a statement of reduction of stated capital, twenty dollars.
  20. Filing a statement of intent to dissolve, ten dollars.
  21. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
  22. Filing articles of dissolution, twenty dollars.
  23. 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~~ one hundred thirty-five dollars.

24. 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.
25. Filing a certificate of fact stating a merger or consolidation of a foreign corporation holding a certificate of authority to transact business in this state, fifty dollars.
26. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.
27. Filing an annual report of a corporation or foreign corporation, twenty-five dollars.
  - a. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
    - (1) Within ninety days after the date provided in subsection 3 of section 10-19.1-146, twenty dollars;
    - (2) Thereafter, sixty dollars; and
    - (3) After the involuntary dissolution of a corporation, or the revocation of the certificate of authority of a foreign corporation, the reinstatement fee of one hundred thirty-five dollars.
  - b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-19.1-146, or the annual report lacks sufficient payment as required by this subsection.
28. Filing any process, notice, or demand for service, twenty-five dollars.
29. Furnishing a certified copy of any record, instrument, or paper relating to a corporation, one dollar for every four pages or fraction and fifteen dollars for the certificate and affixing the seal thereto.
30. ~~License fee of fifty dollars for the first fifty thousand dollars of a corporation's authorized shares, or fraction, and the further sum of ten dollars if paid at the time of authorization, or twelve dollars if paid after authorized shares are issued, for every additional ten thousand dollars of its authorized shares, or fraction thereof, in excess of fifty thousand dollars.~~
  - a. A license fee is payable by a corporation at the time of:
    - (1) Filing articles of incorporation;
    - (2) Filing articles of amendment increasing the number or value of authorized shares; or
    - (3) Filing articles of merger or consolidation increasing the number or value of authorized shares a surviving or new corporation will have authority to issue above the aggregate

number or value of shares the constituent corporations had authority to issue.

- b. A license fee payable on an increase in authorized shares must be imposed only on the additional shares, but the amount of previously authorized shares must be taken into account in determining the rate applicable to the additional authorized shares.
  - c. For the purposes of this subsection, shares without par value are considered worth one dollar per share.
  - d. The minimum sum of fifty dollars must be paid for authorized shares at the time of filing articles of incorporation.
  - e. A corporation increasing authorized shares by articles of amendment or articles of merger must have previously paid for a minimum of fifty thousand dollars of authorized shares.
    - (1) Thereafter, a corporation may postpone the payment for any additional amount until the filing of an annual report after the unpaid shares are issued.
    - (2) Any additional amount must be paid in increments of ten thousand dollars of authorized shares.
  - f. The provisions of this subsection do not apply to a building and loan or savings and loan association.
31. License fee of eighty-five dollars from each foreign corporation at the time of filing an application for a certificate of authority to transact business in this state. Thereafter, the secretary of state shall fix the license fee for each foreign corporation as follows:
- a. The secretary of state shall first ascertain the license fee which a newly organized corporation would be required to pay if it had authorized shares of the same kind and amount as the issued or allotted shares of the reporting foreign corporation shown by its filed annual report.
  - b. Said amount must be multiplied by a fraction, the numerator of which must be the sum of the value of the property of the foreign corporation located in this state and the gross receipts of the foreign corporation derived from that foreign corporation's business transacted within this state, and the denominator of which must be the sum of the value of all of that foreign corporation's property wherever located and the gross receipts of the foreign corporation derived from that foreign corporation's business wherever transacted. The amounts used in determining the numerator and denominator must be determined from the foreign corporation's filed annual report.
  - c. From the product of such multiplication, there must be deducted the aggregate amount of license fee previously paid by the foreign corporation, and the remainder, if any, must be the amount of additional fee to be paid by the foreign corporation.

The secretary of state shall enter the amount of any additional license fee in the records of the foreign corporation in the secretary of state's office and shall mail a notice of the amount of additional license fee due to the foreign corporation at the foreign corporation's principal office. The additional license fee must be paid by the foreign corporation before the annual report may be filed by the secretary of state. Amounts less than five dollars are not collected.

32. Any record submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the record.
33. 31. Filing any other statement of a corporation or foreign corporation, ten dollars.

<sup>50</sup> **SECTION 38. AMENDMENT.** Section 10-32-02 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-02. Definitions.** For purposes of this chapter, unless the context otherwise requires:

1. "Acquiring organization" means the ~~limited liability company or domestic or foreign limited liability company, or corporation or foreign corporation organization that acquires in an exchange the shares ownership interests of a corporation or another foreign corporation the membership interests of a limited liability company or domestic organization in an exchange.~~
2. "Address" means:
  - a. In the case of a registered office or principal executive office, the mailing address, including a zip code, of the actual office location which may not be only a post-office box; and
  - b. In all other cases, the mailing address, including a zip code.
3. "Articles" or "articles of organization" means:
  - a. In the case of a limited liability company organized under this chapter, articles of organization, articles of amendment, 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 membership interests, articles of merger, articles of abandonment, articles of conversion, and articles of termination.
  - b. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed with the secretary of state or other state office of the ~~limited liability company's~~ state of organization of the foreign limited liability company.

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<sup>50</sup> Section 10-32-02 was also amended by section 4 of House Bill No. 1035, chapter 354.

4. "Authenticated electronic communication" means:
  - a. That the electronic communication is delivered:
    - (1) To the principal place of business of the limited liability company; or
    - (2) To a manager or agent of the limited liability company authorized by the limited liability company to receive the electronic communication; and
  - b. That the electronic communication sets forth information from which the limited liability company can reasonably conclude that the electronic communication was sent by the purported sender.
5. "Ballot" means a written ballot or a ballot transmitted by electronic communications.
6. "Board" or "board of governors" means the board of governors of a limited liability company.
7. "Board member" means:
  - a. An individual serving on the board of governors in the case of a limited liability company; and
  - b. An individual serving on the board of directors in the case of a corporation.
8. "Bylaws" means any rule, resolution, or other provision, regardless how designated, that:
  - a. Relates to the management of the business or the regulation of the affairs of the limited liability company; and
  - b. Was expressly part of the bylaws by the action, taken from time to time under section 10-32-68, by the board or the members.
9. "Class", when used with reference to membership interests, means a category of membership interests which differs in one or more rights or preferences from another category of membership interests of the limited liability company.
10. "Closely held limited liability company" means a limited liability company that does not have more than thirty-five members.
11. "Constituent organization" means ~~a limited liability company or a domestic or foreign corporation~~ an organization that:
  - a. In a merger, is either the surviving organization or an organization that is merged into the surviving organization; or
  - b. In an exchange, is either the acquiring organization or an organization whose securities are acquired by the acquiring organization.

12. "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 member contributes to a limited liability company in the capacity of that member as a member.
13. "Contribution agreement" means an agreement between a person and a limited liability company under which:
  - a. The person agrees to make a contribution in the future; and
  - b. The limited liability company agrees that, at the time specified for the contribution in the future, the limited liability company will accept the contribution and reflect the contribution in the required records.
14. "Contribution allowance agreement" means an agreement between a person and a limited liability company under which:
  - a. The person has the right, but not the obligation, to make a contribution in the future; and
  - b. The limited liability company agrees that, if the person makes the specified contribution at the time specified in the future, the limited liability company will accept the contribution and reflect the contribution in the required records.
15. "Converted organization" means the organization resulting from a conversion under sections 10-32-108.1 through 10-32-108.6.
16. "Converting organization" means the organization that effects a conversion under sections 10-32-108.1 through 10-32-108.6.
17. "Corporation" or "domestic corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under chapter 10-19.1.
18. "Dissolution" means that the limited liability company incurred an event under subsection 1 of section 10-32-109, subject only to sections 10-32-116 and 10-32-124, that obligates the limited liability company to wind up the limited liability company's affairs and to terminate the limited liability company's existence as a legal entity.
19. "Dissolution avoidance consent" means the consent of all remaining members:
  - a. Given, as provided in subdivision e of subsection 1 of section 10-32-109, after the occurrence of any event that terminates the continued membership of a member in the limited liability company; and
  - b. That the limited liability company must be continued as a legal entity without dissolution.
20. "Distribution" means a direct or indirect transfer of money or other property, other than its own membership interests, with or without consideration, or an incurrence or issuance of indebtedness, by a

limited liability company to any of the ~~limited liability company's~~ its members in respect of its membership interests. A distribution and may be in the form of an interim distribution or a termination distribution, or as consideration for the purchase, redemption, or other acquisition of its membership interests, or otherwise.

21. "Domestic organization" means an organization created under the laws of this state.
22. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
23. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:
  - a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
  - b. That may be directly reproduced in paper form by the recipient through an automated process.
24. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
25. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and signed or adopted by a person with the intent to sign the record.
26. "Filed with the secretary of state" means except as otherwise permitted by law or rule:
  - a. That a record meeting the applicable requirements of this chapter, together with the fees provided in section 10-32-150, has been delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state, and has been determined by the secretary of state to conform to law.
  - b. That the secretary of state did then:
    - (1) Record the actual date on which the record was filed, and if different, the effective date of filing; and
    - (2) Record the record in the office of the secretary of state.
27. "Financial rights" means a member's rights:
  - a. To share in profits and losses as provided in section 10-32-36;
  - b. To share in distributions as provided in section 10-32-60;
  - c. To receive interim distributions as provided in section 10-32-61; and
  - d. To receive termination distributions as provided in subdivision c of subsection 1 of section 10-32-131.



28. "Foreign corporation" means a corporation organized for profit that is incorporated under laws other than the laws of this state for a purpose for which a corporation may be incorporated under chapter 10-19.1.
29. "Foreign limited liability company" means a limited liability company which is organized under or governed by laws other than the laws of this state for a purpose for which a limited liability company may be organized under this chapter.
30. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.
31. "Good faith" means honesty in fact in the conduct of the act or transaction concerned.
32. "Governance rights" means all of a member's rights as a member in the limited liability company other than financial rights and the right to assign financial rights.
33. "Governing ~~board~~ body" means for an organization that is:
- a. ~~The A corporation, its board of governors in the case of a directors;~~
  - b. A limited liability company, its board of governors; and
  - ~~b. The board of directors in the case of a corporation or~~
  - c. Any other organization, the body selected by its owners that has the ultimate power to determine the policies of the organization and to control its policies.
34. "Governing statute" of an organization means:
- a. With respect to a domestic organization, the following chapters of this code which govern the internal affairs of the organization:
    - (1) If a corporation, then chapter 10-19.1;
    - (2) If a limited liability company, then this chapter;
    - (3) If a general partnership, then chapters 45-13 through 45-21;
    - (4) If a limited partnership, then chapter 45-10.2;
    - (5) If a limited liability partnership, then chapter 45-22; and
    - (6) If a limited liability limited partnership, then chapter 45-23; and
  - b. With respect to a foreign organization, the laws of the jurisdiction under which the organization is created and which govern the internal affairs of the organization.
35. "Governor" means an individual serving on the board.

36. "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.
37. "Legal representative" means a person empowered to act for another person, including an agent, manager, officer, partner, or associate of an organization; a trustee of a trust; a personal representative; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator.
38. "Limited liability company" or "domestic limited liability company" means a limited liability company, other than a foreign limited liability company, organized under or governed by this chapter.
39. "Manager" means:
- An individual who is eighteen years of age or more and who is elected, appointed, or otherwise designated as a manager by the board; and
  - An individual considered elected as a manager pursuant to section 10-32-92.
40. "Member" means a person, with or without voting rights, reflected in the required records of a limited liability company as the owner of a membership interest in the limited liability company.
41. "Membership interest" means one of the units, however designated, into which ~~a member's~~ the proprietary interest of the members in a limited liability company is divided consisting of:
- ~~A member's~~ The financial rights of a member;
  - ~~A member's~~ The right of a member to assign financial rights as provided in section 10-32-31;
  - ~~A member's~~ The governance rights of a member, if any; and
  - ~~A member's~~ The right of a member to assign any governance rights owned as provided in section 10-32-32.
42. "Notice":
- Is given by a member of a limited liability company to the limited liability company or a manager of a limited liability company:

- (1) When in writing and mailed or delivered to the limited liability company or the manager at the registered office or principal executive office of the limited liability company.
  - (2) When given by a form of electronic communication consented to by the limited liability company or a manager to which the notice is given:
    - (a) If by facsimile communication, when directed to a telephone number at which the limited liability company or a manager has consented to receive notice;
    - (b) If by electronic mail, when directed to an electronic mail address at which the limited liability company or a manager has consented to receive notice;
    - (c) If by posting on an electronic network on which the limited liability company or a manager has consented to receive notice, together with separate notice to the limited liability company or a manager of the specific posting, upon the later of:
      - [1] The posting; or
      - [2] The giving of the separate notice; or
    - (d) If by any other form of electronic communication by which the limited liability company or a manager has consented to receive notice, when directed to the limited liability company or a manager.
- b. Is given, in all other cases:
- (1) When mailed to the person at an address designated by the person or at the last-known address of the person;
  - (2) When handed to the person;
  - (3) When left at the office of the person with a clerk or other person in charge of the office or:
    - (a) If there is no one in charge, when left in a conspicuous place in the office; or
    - (b) 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 who is residing there; or
  - (4) When given by a form of electronic communication consented to by the person to whom the notice is given:
    - (a) If by facsimile communication, when directed to a telephone number at which the person has consented to receive notice.

- (b) If by electronic mail, when directed to an electronic mail address at which the person has consented to receive notice.
- (c) If by posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:
  - [1] The posting; or
  - [2] The giving of the separate notice.
- (d) If by any other form of electronic communication by which the person has consented to receive notice when directed to the person.

(5) When the method is fair and reasonable when all of the circumstances are considered.

- c. Is given by mail when deposited in the United States mail with sufficient postage affixed.
- d. Is deemed received when it is given.

43. "Organization" means:

- a. Whether domestic or foreign, a limited liability company, corporation, partnership, limited partnership, limited liability partnership, limited liability limited partnership, or any other person having a governing statute; but
- b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction.

44. "Originating records" means for an organization which is:

- a. A corporation, its articles of incorporation;
- b. A limited liability company, its articles of organization;
- c. A limited partnership, its certificate of limited partnership;
- d. A limited liability partnership, its registration; or
- e. A limited liability limited partnership, its certificate of limited liability limited partnership.

44. 45. "Owners" means:

- a. ~~Members in the case of a limited liability company or a nonprofit corporation; and~~
- b. ~~Shareholders in the case of a corporation~~ the holder of ownership interests in an organization.

- 45- 46. "Ownership interests" means for a domestic or foreign organization that is:
- a. ~~Membership interests in the case of a limited liability company or a nonprofit A corporation, its shares; and~~
  - b. ~~Shares in the case of a corporation~~ A limited liability company, its membership interests;
  - c. A limited partnership, its partnership interests;
  - d. A general partnership, its partnership interests;
  - e. A limited liability partnership, its partnership interests;
  - f. A limited liability limited partnership, its partnership interests; or
  - g. Any other organization, its governance or transferable interests.
- 46- 47. "Parent" of a specified ~~limited liability company organization~~ means a ~~limited liability company, a foreign limited liability company, a corporation, or a foreign corporation~~ an organization that directly or indirectly, through related organizations, owns more than fifty percent of the voting power of the ~~membership ownership~~ interests entitled to vote for governors, ~~or other members of the governing body~~ of the specified ~~limited liability company organization~~.
- 47- 48. "Pertains" means a contribution "pertains":
- a. To a particular series when the contribution is made in return for a membership interest in that particular series.
  - b. To a particular class when the class has no series and the contribution is made in return for a membership interest in the class.
- A contribution that pertains to a series does not pertain to the class of which the series is a part.
- 48- 49. "Principal executive office" means:
- a. If the limited liability company has an elected or appointed president, an office where the elected or appointed president of the limited liability company has an office; or
  - b. If the limited liability company has no elected or appointed president, the registered office of the limited liability company.
- 49- 50. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- 50- 51. "Registered office" means the place in this state designated in a limited liability company's articles of organization or a foreign limited liability company's certificate of authority as the registered office.

- ~~51.~~ 52. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:
- a. Owns, directly or indirectly, at least fifty percent of the ~~shares, membership interests, or other~~ ownership interests of another organization;
  - b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or more of the voting members of the governing body of another organization; or
  - c. Has the power, directly or indirectly, to direct or cause the direction of the management and policies of another organization, whether through the ownership of voting interests, by contract, or otherwise.
- ~~52.~~ 53. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.
- ~~53.~~ 54. "Required records" are those records required to be maintained under section 10-32-51.
- ~~54.~~ 55. "Security" has the meaning given in section 10-04-02.
- ~~55.~~ 56. "Series" means a category of membership interests, within a class of membership interests, that has some of the same rights and preferences as other membership interests within the same class, but that differ in one or more rights and preferences from another category of membership interests within that class.
- ~~56.~~ 57. "Signed" means:
- a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the record, is placed on a record; ~~as provided under section 41-01-11~~ with the present intention to authenticate that record.
  - b. With respect to a record required by this chapter to be filed with the secretary of state, that:
    - (1) The record has been signed by a person authorized to do so by this chapter, the articles of organization, a member-control agreement, or the bylaws or a resolution approved by the governors as required by section 10-32-83 or the members as required by section 10-32-42; and
    - (2) The signature and the record are communicated by a method or medium acceptable by the secretary of state.
- ~~57.~~ 58. "Subsidiary" of a specified ~~limited liability company~~ organization means:

- a. ~~A limited liability company or a foreign limited liability company having more than fifty percent of the voting power of its membership interests entitled to vote for governors owned directly or indirectly through related organizations by the specified limited liability company; or~~
  - b. ~~A domestic corporation or a foreign corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly or indirectly through related organizations by the specified limited liability company an organization having more than fifty percent of the voting power of its ownership interests entitled to vote for governors, or other members of the governing body of the organization owned directly, or indirectly, through related organizations, by the specified organization.~~
- ~~58.~~ 59. "Successor organization" means an organization that, pursuant to a business continuation agreement or an order of the court under subsection 6 of section 10-32-119, continues the business of the dissolved and terminated limited liability company.
- ~~59.~~ 60. "Surviving organization" means the ~~limited liability company or foreign limited liability company or domestic or foreign corporation~~ organization resulting from a merger which:
- a. May preexist the merger; or
  - b. May be created by the merger.
- ~~60.~~ 61. "Termination" means the end of the existence of a limited liability ~~company's existence~~ company as a legal entity and occurs when a notice of termination is:
- a. Filed with the secretary of state under section 10-32-117 together with the fees provided in section 10-32-150; or
  - b. Considered filed with the secretary of state under subdivision c of subsection 2 of section 10-32-106 together with the fees provided in section 10-32-150.
- ~~64.~~ 62. "Vote" includes authorization by written action.
- ~~62.~~ 63. "Winding up" means the period triggered by dissolution during which the limited liability company ceases to carry on business, except to the extent necessary for concluding affairs, and disposing of assets under section 10-32-131.
- ~~63.~~ 64. "Written action" means:
- a. A written record signed by every person required to take the action described; and
  - b. The counterparts of a written record signed by any person taking the action described.
    - (1) Each counterpart constitutes the action of the persons signing it; and

- (2) All the counterparts, taken together, constitute one written action by all of the persons signing them.

**SECTION 39.** A new section to chapter 10-32 of the North Dakota Century Code is created and enacted as follows:

**Reservation of legislative right.** The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A limited liability company organized under or governed by this chapter is subject to this reserved right.

<sup>51</sup> **SECTION 40. AMENDMENT.** Section 10-32-07 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-07. Articles of organization.**

1. The articles of organization must contain:

- a. The name of the limited liability company;
- b. The address of the registered office of the limited liability company and the name of the limited liability company's registered agent at that address;
- c. The name and address of each organizer;
- d. The effective date of organization:
  - (1) If a later date than that on which the certificate of organization is issued by the secretary of state; and
  - (2) Which may not be later than ninety days after the date on which the certificate of organization is issued; and
- e. If the articles of organization are filed with the secretary of state:
  - (1) Before July 1, 1999, a statement stating in years that the period of existence for the limited liability company must be a period of thirty years from the date the articles of organization are filed with the secretary of state, unless the articles of organization expressly authorize a shorter or longer period of duration, which may be perpetual.
  - (2) After June 30, 1999, a statement stating in years the period of existence of the limited liability company, if other than perpetual.

2. The following provisions govern a limited liability company unless modified in the articles of organization or a member-control agreement under section 10-32-50:

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<sup>51</sup> Section 10-32-07 was also amended by section 27 of Senate Bill No. 2153, chapter 99.



- a. A limited liability company has general business purposes as provided in section 10-32-04;
- b. A limited liability company has certain powers as provided in section 10-32-23;
- c. The power to adopt, amend, or repeal the bylaws is vested in the board as provided in subsection 2 of section 10-32-68;
- d. A limited liability company must allow cumulative voting for governors as provided in section 10-32-76;
- e. The affirmative vote of the greater of a majority of governors present or a majority of the minimum number of governors constituting a quorum is required for an action of the board as provided in section 10-32-83;
- f. A written action by the board taken without a meeting must be signed by all governors as provided in section 10-32-84;
- g. The board may accept contributions, make contribution agreements, and make contribution allowance agreements as provided in subsection 1 of section 10-32-56 and sections 10-32-58 and 10-32-59;
- h. All membership interests are ordinary membership interests entitled to vote and are of one class with no series as provided in subdivisions a and b of subsection 5 of section 10-32-56;
- i. All membership interests have equal rights and preferences in all matters not otherwise provided for by the board as provided in subdivision b of subsection 5 of section 10-32-56;
- j. The value of previous contributions must be restated when a new contribution is accepted as provided in subsections 3 and 4 of section 10-32-57;
- k. A member has certain preemptive rights, unless otherwise provided by the board as provided in section 10-32-37;
- l. The affirmative vote of the greater of the owners of a majority of the voting power of the membership interests present and entitled to vote at a duly held meeting or a majority of the voting power of the membership interests with voting rights constituting the minimum voting power needed for a quorum for the transaction of business is required for an action of the members, except when this chapter requires the affirmative vote of:
  - (1) A plurality of the votes cast as provided in subsection 1 of section 10-32-76; or
  - (2) A majority of the voting power of all membership interests entitled, to vote as provided in subsection 1 of section 10-32-42;

- m. The voting power of each membership interest is in proportion to the value reflected in the required records of the contributions of the members as provided in section 10-32-40.1;
  - n. Members share in distributions in proportion to the value reflected in the required records of the contributions of members as provided in section 10-32-60;
  - o. Members share profits and losses in proportion to the value reflected in the required records of the contributions of members as provided in section 10-32-36;
  - p. A written action by the members taken without a meeting must be signed by all members as provided in section 10-32-43;
  - q. Members have no right to receive distributions in kind and the limited liability company has only limited rights to make distributions in kind as provided in section 10-32-62;
  - r. A member is not subject to expulsion as provided in subsection 2 of section 10-32-30;
  - s. Unanimous consent is required for the transfer of governance rights to a person not already a member as provided in subsection 2 of section 10-32-32;
  - t. For a limited liability company whose existence begins before July 1, 1999, unanimous consent is required to avoid dissolution as provided in subdivision e of subsection 1 of section 10-32-109;
  - u. The termination of a person's membership interest has specified consequences as provided in section 10-32-30; and
  - v. Restrictions apply to the assignment of governance rights as provided in section 10-32-32.
3. The following provisions govern a limited liability company unless modified in the articles of organization, a member-control agreement under section 10-32-50, or in the bylaws:
- a. Governors serve for an indefinite term that expires at the next regular meeting of members as provided in section 10-32-72;
  - b. The compensation of governors is fixed by the board as provided in section 10-32-74;
  - c. A certain method must be used for removal of governors as provided in section 10-32-78;
  - d. A certain method must be used for filling board vacancies as provided in section 10-32-79;
  - 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 10-32-80;

- f. The notice of a board meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-32-80;
- g. A majority of the board is a quorum for a board meeting as provided in section 10-32-82;
- h. A committee ~~consists~~:
  - (1) Must consist of one or more individuals, who need not be governors, appointed by affirmative vote of a majority of the governors present as provided in subsection 2 of section 10-32-85; and
  - (2) A committee may create one or more subcommittees, each consisting of one or more members of the committees and may delegate to the subcommittee any or all of the authority of the committee as provided in subsection 7 of section 10-32-85;
- i. The board may establish a special litigation committee as provided in section 10-32-85;
- j. The president and treasurer have specified duties, until the board determines otherwise as provided in section 10-32-89;
- k. Managers may delegate some or all of their duties and powers, if not prohibited by the board from doing so as provided in section 10-32-95;
- l. Regular meetings of members need not be held, unless demanded by a member under certain conditions as provided in section 10-32-38;
- m. In all instances when a specific minimum notice period has not otherwise been fixed by law, not less than ten days' notice is required for a meeting of members as provided in subsection 2 of section 10-32-40;
- n. For a quorum at a members' meeting, there is required a majority of the voting power of the membership interests entitled to vote at the meeting as provided in section 10-32-44;
- o. The board may fix a date up to fifty days before the date of a members' meeting as the date for the determination of the members entitled to notice of and entitled to vote at the meeting as provided in section 10-32-40.1;
- p. Indemnification of certain persons is required as provided in section 10-32-99;
- q. The board may authorize, and the limited liability company may make, distributions not prohibited, limited, or restricted by an agreement as provided in subsection 1 of section 10-32-64; and

- r. Members have no right to interim distributions except as provided through the bylaws or an act of the board as provided in section 10-32-61.
4. The provisions in subdivisions a, g, o, p, and r may be included in the articles of organization or a member-control agreement under section 10-32-50. The provisions in subdivisions b through f, h, i, j, k, l, m, n, and q may be included in the articles of organization, in a member-control agreement under section 10-32-50, or, in the bylaws:
- a. The persons to serve as the first board may be named in the articles of organization as provided in subsection 1 of section 10-32-69;
  - b. A manner for increasing or decreasing the number of governors may be provided as provided in section 10-32-70;
  - c. Additional qualifications for governors may be imposed as provided in section 10-32-71;
  - d. Governors may be classified as provided in section 10-32-75;
  - e. The date, time, and place of board meetings may be fixed as provided in subsection 1 of section 10-32-80;
  - f. Absent governors may be permitted to give written consent or opposition to a proposal as provided in section 10-32-81;
  - g. A larger than majority vote may be required for board action as provided in section 10-32-83;
  - h. Authority to sign and deliver certain records may be delegated to a manager or agent of the limited liability company other than the president as provided in section 10-32-89;
  - i. Additional managers may be designated as provided in section 10-32-88;
  - j. Additional powers, rights, duties, and responsibilities may be given to managers as provided in section 10-32-89;
  - k. A method for filling vacant offices may be specified as provided in subsection 3 of section 10-32-94;
  - l. The date, time, and place of regular member meetings may be fixed as provided in subsection 3 of section 10-32-38;
  - m. Certain persons may be authorized to call special meetings of members as provided in subsection 1 of section 10-32-39;
  - n. Notices of member meetings may be required to contain certain information as provided in subsection 3 of section 10-32-40;
  - o. A larger than majority vote may be required for member action as provided in section 10-32-42;

- p. Voting rights may be granted in or pursuant to the articles of organization to persons who are not members as provided in subsection 3 of section 10-32-40.1;
  - q. Limited liability company actions giving rise to dissenters' rights may be designated as provided in subdivision d of subsection 1 of section 10-32-55; and
  - r. A governor's personal liability to the limited liability company or the limited liability company's members for monetary damages for breach of fiduciary duty as a governor may be eliminated or limited in the articles as provided in subsection 4 of section 10-32-86.
5. ~~Subsection 4 does not limit the right of the board, by resolution, to take an action the bylaws may authorize under this subsection without including the authorization in the bylaws, unless the authorization is required to be included in the bylaws by another provision of this chapter. The articles of organization may contain other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs of the limited liability company.~~
6. ~~The It is not necessary to set forth in the articles of organization may contain other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs any of the limited liability company powers granted by this chapter.~~
7. ~~It is not necessary to set forth in the articles of organization any of the limited liability company powers granted by Subsection 4 does not limit the right of the board by resolution to take an action the bylaws may authorize under this subsection without including the authorization in the bylaws, unless the authorization is required to be included in the bylaws by another provision of this chapter.~~
8. Except for provisions included pursuant to subsection 1, any provision of the articles may:
- a. Be made dependent upon facts ascertainable outside the articles, but only if the manner in which the facts operate upon the provision is clearly and expressly set forth in the articles; and
  - b. Incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the limited liability company, but only if the limited liability company retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

**SECTION 41. AMENDMENT.** Section 10-32-10 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-10. Limited liability company name.**

- 1. The limited liability company name:
  - a. Must be in the English language or in any other language expressed in English letters or characters;

- b. Must contain the words "limited liability company", or must contain the abbreviation "L.L.C." or the abbreviation "LLC", either of which abbreviation may be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state;
  - c. May not contain the word "corporation", "incorporated", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words;
  - d. May not contain a word or phrase that indicates or implies that the limited liability company:
    - (1) Is organized for a purpose other than:
      - (a) A lawful business purpose for which a limited liability company may be organized under this chapter; or
      - (b) For a purpose stated in its articles of organization; or
    - (2) May not be organized under this chapter; and
  - e. May not be the same as, or deceptively similar to:
    - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the articles a record which complies with subsection 3, of:
      - (a) Another limited liability company;
      - (b) A corporation;
      - (c) A limited partnership;
      - (d) A limited liability partnership; or
      - (e) A limited liability limited partnership;
    - (2) A name, the right of which is, at the time of organization, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
    - (3) A fictitious name registered in the manner provided in chapter 45-11; or
    - (4) A trade name registered in the manner provided in chapter 47-25.
2. The secretary of state shall determine whether a limited liability company name is deceptively similar to another name for purposes of this chapter.
  3. If the secretary of state determines that a limited liability company name is deceptively similar to another name for purposes of this chapter, then the limited liability company name may not be used unless there is filed with the articles:

- a. The written consent of the holder of the rights to the name to which the proposed name has been determined to be deceptively similar; or
  - b. 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.
4. This section and section 10-32-11 do not:
- a. Abrogate or limit:
    - (1) The law of unfair competition or unfair practices;
    - (2) Chapter 47-25;
    - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or
    - (4) Any other rights to the exclusive use of names or symbols.
  - b. Derogate the common law or the principles of equity.
5. A domestic or foreign limited liability company that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the organization whose name is sought to be used:
- a. Was organized, incorporated, formed, or registered under the laws of this state;
  - b. Is authorized to transact business or conduct activities in this state;
  - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
  - e. Holds a trade name registered in the manner provided in chapter 47-25.
6. The use of a name by a limited liability company in violation of this section does not affect or vitiate its limited liability company existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the limited liability company from doing business under a name assumed in violation of this section, although its articles of organization may have been filed with the secretary of state and a certificate of organization issued.

7. A limited liability company whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 10-32-149 may reacquire the right to use that name by refiling articles of organization pursuant to section 10-32-20, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 2. A limited liability company that cannot reacquire the use of its limited liability company name shall adopt a new limited liability company name which complies with the provisions of this section:
  - a. By refiling the articles of organization pursuant to section 10-32-07;
  - b. By amending pursuant to section 10-32-18; or
  - c. By reinstating pursuant to section 10-32-149.
8. Subject to section 10-32-136, this section applies to any foreign limited liability company transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.
9. An amendment that only changes the name of the limited liability company may be authorized by a resolution approved by the board and may, but need not, be submitted to and approved by the members as provided in section 10-32-15.

**SECTION 42. AMENDMENT.** Section 10-32-27 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-27. Transaction of business outside North Dakota.** By enacting this chapter the legislative assembly recognizes the limited liability company as an important and constructive form of business organization. The legislative assembly understands that:

1. Businesses organized under or governed by this chapter will often transact business in other states;
2. For businesses organized under or governed by this chapter to function effectively and for this chapter to be a useful enactment, this chapter must be accorded the same comity and full faith and credit that states typically accord to each other's corporate laws; and
3. Specifically, it is essential that other states recognize both the legal existence of limited liability companies ~~formed~~ organized under or governed by this chapter and the legal status of all members of these limited liability companies.

The legislative assembly therefore specifically seeks that, subject to any reasonable registration requirements, other states extend to this chapter the same full faith and credit under section 1 of article IV of the Constitution of the United States, and the same comity, that North Dakota extends to statutes that other states enact to provide for the establishment and operation of business organizations.

**SECTION 43. AMENDMENT.** Subsection 1 of section 10-32-37 of the North Dakota Century Code is amended and reenacted as follows:



1. ~~To the extent allowed by section 9 of article XII of the Constitution of North Dakota, a member of a limited liability company has the preemptive rights provided in this section, unless~~ Unless denied or limited in the articles of organization, in a member-control agreement, or by the board pursuant to subdivision b of subsection 5 of section 10-32-56, a member of a limited liability company has the preemptive rights provided in this section.

**SECTION 44.** Section 10-32-42.1 of the North Dakota Century Code is created and enacted as follows:

**10-32-42.1. Contractual requirement to submit matter to members.** A limited liability company may agree to submit a matter to its members whether or not the board determines, at any time after approving the matter, that the matter is no longer advisable and recommends that the members reject it.

**SECTION 45. AMENDMENT.** Section 10-32-43 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-43. Action Member action without a meeting by the members.** An action required or permitted to be taken at a meeting of the members may be taken without a meeting by written action signed, or consented to by authenticated electronic communication, by all of the members entitled to vote on that action.

1. If the articles or a member-control agreement so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, by the members who own voting power equal to the voting power that would be required to take the same action at a meeting of the members at which all members were present.
  - a. However, in no event may written action be taken by members holding less than a majority of the voting power of all membership interests entitled to vote on the action.
  - b. After the adoption of the initial articles or the first making of a member-control agreement, an amendment to the articles or to a member-control agreement to permit written action to be taken by less than all members requires the approval of all the members entitled to vote on the amendment.
2. The written action is effective when signed, or consented to by authenticated electronic communication, by the required members, unless a different effective time is provided in the written action.
  - a. When written action is permitted to be taken by less than all members, all members must be notified immediately of its text and effective date.
  - b. Failure to provide the notice does not invalidate the written action.
  - c. A member who does not sign or consent to the written action has no liability for the action or actions taken by the written action.
3. When this chapter requires or permits a certificate concerning an action to be filed with the secretary of state, the managers signing the certificate must so indicate if the action was taken under this section.

**SECTION 46. AMENDMENT.** Subsection 1 of section 10-32-76 of the North Dakota Century Code is amended and reenacted as follows:

1. Unless otherwise provided in the articles or a member-control agreement and subject to subsection 2, governors are elected by a plurality of the voting power of the membership interests present and entitled to vote on the election of governors at a meeting at which a quorum is present.

**SECTION 47.** A new subsection to section 10-32-85 of the North Dakota Century Code is created and enacted as follows:

Unless otherwise provided in the articles, the bylaws, or the resolution of the board establishing the committee, a committee may create one or more subcommittees, each consisting of one or more members of the committee, and may delegate to a subcommittee any or all of the authority of the committee. In this chapter, unless the language or the context clearly indicates that a different meaning is intended:

- a. Any reference to a committee is deemed to include a subcommittee; and
- b. Any reference to a committee member is deemed to include a subcommittee member.

**SECTION 48. AMENDMENT.** Subsection 2 of section 10-32-94 of the North Dakota Century Code is amended and reenacted as follows:

2. Except as otherwise provided in the articles ~~or, the~~ bylaws, or a member-control agreement, a manager may be removed at any time, with or without cause, by a resolution approved by the affirmative vote of a majority of the governors present, ~~subject to the provisions of a member-control agreement.~~ The articles of organization, the bylaws, or a member-control agreement may provide other manners of removing a manager. Removal is without prejudice to any contractual rights of the ~~officer~~ manager.

**SECTION 49. AMENDMENT.** Section 10-32-100 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-100. Merger - Exchange - Transfer.**

1. With or without a business purpose, a limited liability company may merge:
  - a. ~~With another limited liability company pursuant to a plan of merger approved in the manner provided in sections 10-32-104 through 10-32-106.~~
  - b. ~~With a corporation under a plan of merger approved in the manner provided in sections 10-32-104 through 10-32-107 and in chapter 10-19.1.~~
  - c. ~~With any foreign corporation or foreign limited liability company pursuant to a plan of merger approved in the manner provided in section 10-32-107 with another domestic or foreign organization~~

under a plan of merger approved in the manner provided in this section and sections 10-32-101 through 10-32-106 and in the manner provided in its governing statutes in the case of any other organization.

2. With respect to an exchange:
  - a. ~~A limited liability company may acquire all of the ownership interests of one or more classes or series of another limited liability company domestic or foreign organization pursuant to a plan of exchange approved in the manner provided in sections 10-32-101 through 10-32-106 in the case of a domestic limited liability company and in the manner provided in its governing statutes in the case of any other organization.~~
  - b. ~~A limited liability company may acquire all of the ownership interests of one or more classes or series of a corporation pursuant to a plan of exchange approved in the manner provided in sections 10-32-101 through 10-32-107 and in chapter 10-19.1.~~
  - c. ~~A corporation. Another domestic or foreign organization may acquire all of the ownership membership interests of one or more classes or series of a limited liability company pursuant to a plan of exchange approved in the manner provided in this section and in sections 10-32-101 through 10-32-106 10-32-107 and in chapter 10-19.1 the manner provided in its governing statute in the case of any other organization.~~
  - d. ~~A foreign corporation or foreign limited liability company may acquire all of the ownership interests of one or more classes or series of a limited liability company pursuant to a plan of exchange approved in the manner provided in section 10-32-107.~~
3. A limited liability company may sell, lease, transfer, or otherwise dispose of all or substantially all of the limited liability company's property and assets in the manner provided in section 10-32-108.
4. A limited liability company may participate in a merger or exchange only as permitted by this section and sections 10-32-101 through 10-32-107.

**SECTION 50. AMENDMENT.** Subsection 1 of section 10-32-101 of the North Dakota Century Code is amended and reenacted as follows:

1. A plan of merger or exchange must contain:
  - a. The name of the limited liability company and of each other constituent organization proposing to merge or participate in an exchange, and:
    - (1) In the case of a merger, the name of the surviving organization, ~~which may be the limited liability company or the other constituent organization;~~ or
    - (2) In the case of an exchange, the name of the acquiring organization;

- b. The terms and conditions of the proposed merger or exchange;
- c. The manner and basis for converting or exchanging ownership interests:
  - (1) In the case of a merger, the manner and basis of converting the ownership interests of the constituent organizations into securities of the surviving organization or of any other organization or, in whole or in part, into money or other property; or
  - (2) In the case of an exchange, the manner and basis of exchanging the ownership interests to be acquired for securities of the acquiring organization or any other organization or, in whole or in part, for money or other property;
- d. In the case of a merger, a statement of any amendments to the articles of ~~organization or articles of incorporation, as the case may be,~~ of the surviving organization proposed as part of the merger; and
- e. Any other provisions with respect to the proposed merger that are considered necessary or desirable.

**SECTION 51. AMENDMENT.** Section 10-32-102 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-102. Plan approval.**

1. A resolution containing the plan of merger or exchange must be approved by the governing ~~board~~ body as required by section ~~40-19.1-46 or~~ 10-32-83 in the case of a domestic limited liability company or by its governing statute in the case of each constituent any other organization and must then be submitted at a regular or special meeting to the owners of each constituent organization in the case of a plan of merger; and the constituent organization whose ownership interests will be acquired by the acquiring constituent organization in the exchange, in the case of an exchange. ~~The plan of merger or exchange may require that it be submitted to the owners whether or not the governing board determines at any time after the governing board's initial approval of the plan that the plan is no longer advisable and recommends that the owners reject it.~~ If owners owning any class or series of ownership interests in a constituent organization are entitled to vote on the plan of merger or exchange pursuant to this subsection, then written notice must be given to every owner of that constituent organization, whether or not entitled to vote at the meeting, not less than fourteen days nor more than sixty days before the meeting, in the manner provided in section ~~40-19.1-73 for notice of meetings of shareholders in the case of a corporation and in the manner provided in section~~ 10-32-40 for notice of meetings of members in the case of a limited liability company, or in the manner provided in its governing statute for any other organization. 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 owners must be taken on the proposed plan. The plan of merger is adopted when approved by the affirmative vote of the owners of a majority of the voting power of all ownership interests entitled to vote as required by section ~~10-19.1-74~~ or 10-32-42 in the case of a domestic limited liability company, or in the manner provided in its governing statute in the case of any other organization. Except as provided in subsection 3 or a member-control agreement, a class or series of ownership interests of the constituent organization 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 of organization or a member-control agreement, entitle the class or series of ownership interests to vote as a class or series and, in the case of an exchange, if the class or series is included in the exchange.
3. A class or series of ownership interests of the constituent organization is not entitled to vote as a class or series ~~solely because the plan of merger or exchange effects a cancellation or exchange of the ownership interests of the class or series~~ if the plan of merger or exchange effects a cancellation or exchange of all ownership interests of the constituent organization of all classes and series that are existing immediately before the merger or exchange and owners of ownership interests of that class or series are entitled to obtain payment for the fair value of their ownership interests under section ~~10-19.1-87~~ or 10-32-55; ~~as in the case of a domestic limited liability company, or in the manner provided in the governing statute in the case may be of any other organization,~~ in the event of the merger or exchange.
4. Notwithstanding subsections 1 and 2, submission of a plan of merger to a vote at a meeting of owners of a surviving constituent organization is not required if:
  - a. The articles will not be amended in the transaction;
  - b. Each owner of ownership interests in the constituent organization which were outstanding immediately before the effective ~~time~~ date of the transaction will hold the same number of ownership interests with identical rights immediately after that ~~time~~ date;
  - c. The voting power of the outstanding ownership interests of the constituent organization entitled to vote immediately after the merger, plus the voting power of the outstanding ownership interests of the constituent organization entitled to vote issuable on conversion of or on the exercise of rights to purchase securities issued in the transaction, will not exceed by more than twenty percent the voting power of the outstanding ownership interests of the constituent organization entitled to vote immediately before the transaction; and
  - d. The number of participating ownership interests of the constituent organization immediately after the merger, plus the number of participating ownership interests of the constituent organization issuable on conversion, or on the exercise of rights to purchase, securities issued in the transaction, will not exceed by more than twenty percent the number of participating ownership interests of the constituent organization immediately before the transaction. "Participating ownership interests" are outstanding ownership

interests of the constituent organization which entitle the ownership interests owners to participate without limitation in distributions by the constituent organization.

5. If the merger or exchange is with ~~a corporation~~ an organization other than a limited liability company, then the plan of merger or exchange must also be approved in the manner provided in ~~chapter 10-19.1~~ its governing statute.

**SECTION 52. AMENDMENT.** Subsection 1 of section 10-32-103 of the North Dakota Century Code is amended and reenacted as follows:

1. Upon receiving the approval required by section 10-32-102, articles of merger must be prepared which contain:
  - a. The plan of merger; and
  - b. A statement that the plan has been approved by each constituent organization ~~pursuant to chapter 10-19.1~~ or in the manner provided in this chapter in the case of a domestic limited liability company, or in the manner provided in its governing statute in the case of any other organization.

**SECTION 53. AMENDMENT.** Section 10-32-104 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-104. Merger of subsidiary into parent.**

1. A If either the parent or the subsidiary is a domestic organization, then a parent that is a domestic or foreign organization owning at least ninety percent of the outstanding ownership interests of each class and series of a subsidiary that is a domestic or foreign organization directly, or indirectly through related organizations other than classes or series that absent this section would otherwise not be entitled to vote on the merger:
  - a. May merge the subsidiary into the parent, or may merge the subsidiary into any other subsidiary at least ninety percent of the outstanding ownership interest of each class and series of which is owned by the parent directly or indirectly through related organizations other than classes or series that, absent this section, would otherwise not be entitled to vote on the merger, without a vote of the owners of the parent or any subsidiary; or
  - b. May merge the parent, or the parent and one or more subsidiaries, into one of the subsidiaries under this section.
2. A resolution approved by the ~~directors of the parent as required by section 10-19.1-46~~ or by the governors of the parent present as required by section 10-32-83 in the case of a domestic limited liability company, or by the present members of the governing body of the parent as required by its governing statute in the case of any other organization must set forth a plan of merger which contains:
  - a. The name of the subsidiary or subsidiaries, the name of the parent, and the name of the surviving constituent organization;

- b. The manner and basis of converting the ownership interests of the subsidiary into ownership interests of the parent, the subsidiary, or of another organization or, in whole or in part, into money or other property;
    - c. If the parent is a constituent organization but is not the surviving constituent organization in the merger, then a provision for the pro rata issuance of ownership interests of the surviving constituent organization to the owners of ownership interests of the parent on surrender of any ownership interests of the parent; and
    - d. If the surviving constituent organization is a subsidiary, then a statement of any amendments to the articles of the surviving constituent organization that will be part of the merger.
  3. # Notwithstanding subsection 1:
    - a. If the parent is a domestic limited liability company and the conditions of subsection 4 of section 10-32-102 are not met with respect to the parent, then the resolution is not effective unless it is approved by the affirmative vote of the holders of a majority of the voting power of all membership interests of the parent entitled to vote at a regular or special meeting held in accordance with section 10-32-102; and
    - b. If the parent is a domestic or foreign organization and is not the surviving organization in the merger, then the resolution is not effective unless it is approved in accordance with the governing statute of the parent.
  4. Notwithstanding subsection 3, if the parent is a constituent organization and is the surviving organization in the merger, it may change its limited liability company name, without a vote of its owners, by the inclusion of a provision to that effect in the resolution of merger setting forth the plan of merger that is approved by the affirmative vote of the board members of the parent present. Upon the effective date of the merger, the name of the parent must be changed.
  4. If the parent is a constituent organization but is not the surviving constituent organization in a merger, the resolution is not effective unless the resolution is also approved by the affirmative vote of the holders of a majority of the voting power of all ownership interests of the parent entitled to vote at a regular or special meeting held in accordance with section 10-10-1-08 if the parent is a corporation, section 10-32-102 if the parent is a limited liability company, or in accordance with the laws of the jurisdiction under which the parent is incorporated or organized if the parent is a foreign corporation or foreign limited liability company.
  5. Notice If the subsidiary is a domestic organization, then notice of the action, including a copy of the plan of merger must be given to each owner, other than the parent, of each subsidiary that is a constituent organization to the merger before, or within ten days after, the effective date of the merger.
  6. Articles of merger must be prepared which contain:

- a. The plan of merger;
  - b. The number of outstanding ownership interests of each class and series of the subsidiary that is a constituent organization in the merger, other than the classes or series that, absent this section, would otherwise not be entitled to vote on the merger, and the number of ownership interests of each class and series of the subsidiary or subsidiaries, other than the classes or series that, absent this section, would otherwise not be entitled to vote on the merger, owned by the parent directly or indirectly, through related ~~constituent~~ constituent organizations; and
  - c. A statement that the plan of merger has been approved by the parent under this section.
7. The articles of merger must be signed on behalf of the parent and filed with the secretary of state, together with the fees provided in section 10-32-150.
  8. The secretary of state shall issue a certificate of merger to the surviving constituent organization in the merger or the surviving constituent organization's legal representative. The certificate must contain the effective date of merger.
  9. If all of the ownership interests of one or more domestic subsidiaries that are a constituent organization to a merger under this section are not owned by the parent directly, or indirectly through related constituent organizations, immediately before the merger, then the owners of each domestic subsidiary which is either a domestic corporation or a domestic limited liability company have dissenters' rights under section 10-19.1-87 or under section 10-32-54, without regard to subsection 3 of section 10-19.1-88 or to subsection 2 of section 10-32-54, and under section 10-19.1-88 or 10-32-55.
    - a. If the parent is a constituent organization but is not the surviving constituent organization in the merger, and the articles of incorporation or articles of organization of the surviving constituent organization immediately after the merger differ from the articles of incorporation or articles of organization of the parent immediately before the merger in a manner that would entitle an owner of the parent to dissenters' rights under subsection 1 of section 10-19.1-87 or under subdivision a of subsection 1 of section 10-32-54 if the articles of incorporation or articles of organization of the surviving constituent organization constitute an amendment to the articles of incorporation or articles of organization of the parent, then that owner of the parent has dissenters' rights as provided under section 10-19.1-87 or under section 10-32-54.
    - b. Except as provided in this subsection, sections 10-19.1-87 and 10-32-54 do not apply to any merger affected under this section.
  10. A merger among a parent and one or more subsidiaries or among two or more subsidiaries of a parent may be accomplished under sections 10-32-101 through 10-32-103 instead of this section, in which case this section does not apply.



**SECTION 54. AMENDMENT.** Section 10-32-105 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-105. Abandonment of plan of merger.**

1. After a plan of merger is approved by the owners entitled to vote on the approval of the plan as provided in section 10-32-102, and before the effective date of the plan, the plan of merger may be abandoned:
  - a. With respect to approval of the abandonment:
    - (1) If the owners of ownership interests of each of the constituent organizations entitled to vote on the approval of the plan as provided in section 10-32-102 have approved the abandonment at a meeting by the owners of a majority of the voting power of the ownership interests entitled to vote as required by section ~~40-19.1-74~~ or 10-32-42 in the case of a domestic limited liability company, or by its governing statute in the case of any other organization;
    - (2) If the owners of a constituent organization are not entitled to vote on the approval of the plan under section 10-32-102, then if the governing ~~board~~ body of that constituent organization has approved the abandonment by the board as required by section ~~40-19.1-46~~ or 10-32-83 in the case of a domestic limited liability company, or by its governing statute in the case of any other organization; and
    - (3) If the merger or exchange is with a foreign ~~corporation or foreign limited liability company~~ organization, then if abandonment is approved in the manner required by the laws of the jurisdiction under which the corporation is incorporated or the limited liability company is organized provided in its governing statute;
  - 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 before the effective date of the plan, then a resolution by the governing ~~board~~ body of any constituent organization abandoning the plan of merger or exchange may be approved by the ~~board~~ governing body as required by section ~~40-19.1-46~~ or 10-32-83 in the case of a domestic limited liability company, or by its governing statute in the case of any other organization subject to the contract rights of any other person under the plan.
3. If articles of merger have been filed with the secretary of state, but have not yet become effective, the constituent organizations, in the case of abandonment under subdivision a of subsection 1, then the constituent organizations or any one constituent organization, in the case of abandonment under subdivision b of subsection 1, or the abandoning constituent organization in the case of abandonment under

subsection 2, shall file with the secretary of state together with the fees provided in section 10-32-150, articles of abandonment that contain:

- a. The names of the constituent organizations;
  - b. The provision of this section under which the plan is abandoned; and
  - c. The text of the resolution abandoning the plan.
4. If the certificate of merger has been issued, then the governing ~~board~~ body shall surrender the certificate to the secretary of state upon filing the articles of abandonment.

**SECTION 55. AMENDMENT.** Subsections 2 and 3 of section 10-32-106 of the North Dakota Century Code are amended and reenacted as follows:

2. When a merger becomes effective:
  - a. The constituent organizations become a single entity, the surviving ~~corporation, or surviving limited liability company organization~~;
  - b. The separate existence of all constituent organizations except the surviving constituent organization ceases;
  - c. As to any limited liability company that was a constituent organization and is not the surviving constituent organization, the articles of merger serve as the articles of termination and, unless previously filed, the notice of dissolution;
  - d. ~~As to rights, privileges, immunities, powers, duties, and liabilities:~~
    - (1) ~~If the surviving organization is a limited liability company, the~~ The surviving limited liability company organization has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities of a ~~limited liability company organized under this chapter~~; and
    - (2) ~~If the surviving organization is a corporation, the surviving corporation has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities of a corporation~~ the specified organization under its governing statute;
  - e. The surviving constituent organization, ~~whether a limited liability company or a domestic or foreign corporation~~, possesses all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the constituent organizations.
    - (1) All property, real, personal, and mixed, and all debts due on any account, including subscriptions to ~~shares ownership interests~~ and contribution agreements, as the case may be, and all other choses in action, and every other interest of or belonging to or due to each of the constituent organizations vests in the surviving constituent organization without any further act or deed.

- (2) Confirmatory deeds, assignments, or similar instruments to accomplish that vesting may be signed and delivered at any time in the name of a constituent organization by its current officers ~~or~~, managers, ~~as the case may be or governing body~~, or, if the organization no longer exists, by its last officers ~~or~~, managers, ~~as the case may be or governing body~~.
    - (3) The title to any real estate or any interest in real estate vested in any of the constituent organizations does not revert nor in any way become impaired by reason of the merger;
  - f. The surviving constituent organization is responsible and liable for all the liabilities and obligations of each of the constituent organizations.
    - (1) A claim of or against or a pending proceeding by or against a constituent organization may be prosecuted as if the merger had not taken place, or the surviving organization may be substituted in the place of the constituent organization.
    - (2) Neither the rights of creditors nor any liens upon the property of a constituent organization are impaired by the merger; and
  - g. The articles of ~~organization or articles of incorporation, as the case may be~~, of the surviving organization are considered to be amended to the extent that changes in its articles, if any, are contained in the plan of merger.
3. When a merger becomes effective, the ownership interests to be converted or exchanged under the terms of the plan cease to exist in the case of a merger, or are considered to be exchanged in the case of an exchange. The owners of those ownership interests are entitled only to the securities, money, or other property into which those ownership interests have been converted or for which those ownership interests have been exchanged in accordance with the plan, subject to any dissenters' rights under section 10-19.1-87 or 10-32-54, ~~as the case may be~~.

**SECTION 56. AMENDMENT.** Section 10-32-106.1 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-106.1. Continuance of limited liability company authority.** When an act or record is considered necessary or appropriate to evidence the vesting of property or other rights in the single limited liability company, the persons with authority to do so under the articles ~~or~~, bylaws, ~~or member-control agreement~~ of each constituent organization shall do the act or sign and deliver the record and for this purpose, the existence of the constituent organizations and the authority of those persons are continued.

<sup>52</sup> **SECTION 57. AMENDMENT.** Section 10-32-107 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-107. Merger or exchange with foreign limited liability company or foreign corporation.**

1. A limited liability company may merge with, including a merger pursuant to section 10-32-104, or participate in an exchange with a foreign ~~corporation or a foreign limited liability company~~ organization by following the procedures set forth in this section, if:
  - a. With respect to a merger, the merger is permitted by ~~the laws of the jurisdiction under which the foreign corporation or foreign limited liability company is incorporated or organized~~ its governing statute; and
  - b. With respect to an exchange, the constituent organization of which the ownership interests will be acquired is a ~~limited liability company or a corporation~~ an organization, regardless of whether the exchange is permitted by ~~the laws of the jurisdiction under which the foreign corporation or foreign limited liability company is incorporated or organized~~ its governing statute.
2. Each limited liability company shall comply with the provisions of this section and sections 10-32-100 through 10-32-106 with respect to the merger or exchange of ownership interests of organizations and each ~~foreign corporation or foreign limited liability company~~ organization shall comply with the applicable provisions of ~~the laws of the jurisdiction under which the foreign corporation or foreign limited liability company is incorporated or organized or under which the foreign corporation or foreign limited liability company is governed~~ its governing statute.
3. If the surviving organization in a merger will be a domestic limited liability company, then the surviving organization shall comply with all the provisions of this chapter.
4. If the surviving organization in a merger will be a foreign ~~corporation or foreign limited liability company~~ organization and will transact business in this state, then the surviving organization shall comply, ~~as the case may be, with the provisions of chapter 10-19.1 with respect to foreign corporations or with the provisions of this chapter with respect to foreign limited liability companies~~ its governing statute. In every case, the surviving ~~foreign corporation or foreign limited liability company~~ organization shall file with the secretary of state:
  - a. An agreement that the surviving organization may be served with process in this state in a proceeding for the enforcement of an obligation of a constituent organization and in a proceeding for the enforcement of the rights of a dissenting owner of an ownership

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<sup>52</sup> Section 10-32-107 was also amended by section 30 of Senate Bill No. 2153, chapter 99.

interest of a constituent organization against the surviving foreign ~~corporation or foreign limited liability company~~ organization;

- b. An irrevocable appointment of the secretary of state as the ~~surviving organization's agent of the surviving organization~~ to accept service of process in any proceeding, and an address to which process may be forwarded; and
- c. An agreement that the surviving organization promptly will pay to the dissenting owners of ownership interests of each constituent ~~limited liability company and constituent corporation~~ organization the amount, if any, to which the dissenting owners are entitled under ~~section 10-19.1-88 or 10-32-55~~ its governing statute.

**SECTION 58. AMENDMENT.** Subsection 4 of section 10-32-108 of the North Dakota Century Code is amended and reenacted as follows:

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. A disposition of all or substantially all of the property and assets of the limited liability company under this section is not considered to be a merger or a de facto merger pursuant to this chapter or otherwise. The transferee shall not be liable solely because it is deemed to be a continuation of the transferor.

<sup>53</sup> **SECTION 59. AMENDMENT.** Section 10-33-01 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-01. Definitions.** For the purposes of this chapter, unless the context otherwise requires:

1. "Activity" or "activities" means, in a corporation organized under this chapter, the functional equivalent of "business" in a corporation organized under chapter 10-19.1.
2. "Address" means:
  - a. In the case of a registered office or principal executive office, the mailing address, including a zip code, of the actual office location which may not be only a post-office box; and
  - b. In any other case, the mailing address, including a zip code.
3. "Articles" means:
  - a. 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

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<sup>53</sup> Section 10-33-01 was also amended by section 5 of House Bill No. 1035, chapter 354.

statement of change of registered office, registered agent, or name of registered agent, articles of merger, articles of consolidation, articles of abandonment, articles of dissolution, and any annual report in which a registered office or registered agent has been established or changed.

- b. In the case of a foreign corporation, the term includes all records serving a similar function required to be filed with the secretary of state or other officer of the ~~corporation's~~ state of incorporation of the foreign corporation.
4. "Authenticated electronic communication" means:
  - a. That the electronic communication is delivered:
    - (1) To the principal place of activity of the corporation; or
    - (2) To an officer or agent of the corporation authorized by the corporation to receive the electronic communication; and
  - b. That the electronic communication sets forth information from which the corporation can reasonably conclude that the electronic communication was sent by the purported sender.
5. "Ballot" means a written ballot or a ballot transmitted by electronic communication.
6. "Board" means the board of directors of a corporation.
7. "Board member" means an individual serving on the board.
8. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how designated.
9. "Corporation" means a corporation, other than a foreign corporation, that is incorporated under or governed by this chapter.
10. "Director" means a member of the board.
11. "Domestic organization" means an organization created under the laws of this state.
12. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
13. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:
  - a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
  - b. That may be directly reproduced in paper form by the recipient through an automated process.
14. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

15. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and signed or adopted by a person with the intent to sign the record.
16. "Filed with the secretary of state" means except as otherwise permitted by law or rule:
  - a. That a record meeting the applicable requirements of this chapter, together with the fees provided in section 10-33-140, was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law; and
  - b. That the secretary of state did then:
    - (1) Record the actual date on which the record was filed, and if different, the effective date of filing; and
    - (2) Record the record in the office of the secretary of state.
17. "Foreign corporation" means a corporation that is formed under laws other than the laws of this state for a purpose for which a corporation may be organized under this chapter.
18. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.
19. "Good faith" means honesty in fact in the conduct of an act or transaction.
20. "Intentionally" means the person referred to has a purpose to do or fail to do the act or cause the result specified, or believes the act or failure to act, if successful, will cause that result. A person intentionally violates a statute:
  - a. If the person intentionally does the act or causes the result prohibited by the statute; or
  - b. 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.
21. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time, and successive federal revenue Acts.
22. "Legal representative" means a person empowered to act for another person, including an agent, manager, officer, partner, or associate of an organization; a trustee of a trust; a personal representative; a trustee in bankruptcy; or a receiver, guardian, custodian, or conservator.
23. "Member" means a person with membership rights in a corporation under its articles or bylaws, regardless of how the person is identified.

24. "Members with voting rights" means members or a class of members that has voting rights with respect to the purpose or matter involved.
25. "Nonprofit purpose" or "nonprofit activity" means a purpose or activity not involving pecuniary gain to any officer, director, or member, other than a member that is a nonprofit organization or subdivision, unit, or agency of the United States or a state or local government.
26. "Notice":
  - a. Is given by a member of a corporation to the corporation or an officer of the corporation:
    - (1) When in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation; or
    - (2) When given by a form of electronic communication consented to by the corporation to which the notice is given if by:
      - (a) Facsimile communication, when directed to a telephone number at which the corporation has consented to receive notice.
      - (b) Electronic mail, when directed to an electronic mail address at which the corporation has consented to receive notice.
      - (c) Posting on an electronic network on which the corporation has consented to receive notice, together with separate notice to the corporation of the specific posting, upon the later of:
        - [1] The posting; or
        - [2] The giving of the separate notice.
      - (d) Any other form of electronic communication by which the corporation has consented to receive notice, when directed to the corporation.
  - b. Is given, in all other cases:
    - (1) When mailed to the person at an address designated by the person or at the last-known address of the person;
    - (2) When handed to the person;
    - (3) When left at the office of the person with a clerk or other person in charge of the office or:
      - (a) If there is no one in charge, when left in a conspicuous place in the office; or



- (b) 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 there;
  - (4) When given by a form of electronic communication consented to by the person to whom the notice is given if by:
    - (a) Facsimile communication, when directed to a telephone number at which the person has consented to receive notice;
    - (b) Electronic mail, when directed to an electronic mail address at which the person has consented to receive notice; or
    - (c) Posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:
      - [1] The posting; or
      - [2] The giving of the separate notice; or
  - (5) When the method is fair and reasonable when all of the circumstances are considered.
- c. Is given by mail when deposited in the United States mail with sufficient postage affixed.
  - d. Is deemed received when it is given.
27. "Officer" means an individual who is more than eighteen years of age and who is:
- a. Elected, appointed, or otherwise designated as an officer by the board or the members; or
  - b. Considered elected as an officer pursuant to section 10-33-52.
28. "Organization" means:
- a. Whether domestic or foreign, a corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, business trust, or any other person having a governing statute; but
  - b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under this chapter or a foreign nonprofit corporation which is incorporated in another jurisdiction.
29. "Principal executive office" means:

- a. If the corporation has an elected or appointed president, then an office where the elected or appointed president of the corporation has an office; or
  - b. If the corporation has no elected or appointed president, then the registered office of the corporation.
30. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
31. "Registered office" means the place in this state designated in a corporation's articles of incorporation or in a foreign corporation's certificate of authority as the registered office.
32. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:
- a. Owns, directly or indirectly, at least fifty percent of the ~~shares, membership interests, or other~~ ownership interests of another organization;
  - b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or more of the voting members of the governing body of another organization; or
  - c. Has the power, directly or indirectly, to direct or cause the direction of the management and policies of another organization, whether through the ownership of voting interests, by contract, or otherwise.
33. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.
34. "Signed" means:
- a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the record, is placed on a with the present intention to authenticate that record, as provided under section 41-01-11; and
  - b. With respect to a record required by this chapter to be filed with the secretary of state, that:
    - (1) The record is signed by a person authorized to do so by this chapter, the articles, or bylaws, a resolution approved by the directors as required by section 10-33-42, or the members with voting rights, if any, as required by section 10-33-72; and

- (2) The signature and the record are communicated by a method or medium of communication acceptable by the secretary of state.

35. "Subsidiary" of a specified ~~corporation~~ organization means:

- a. A ~~corporation or a foreign corporation~~ having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly or indirectly through related organizations, by the specified corporation; or
- b. A limited liability company or a foreign limited liability company having more than fifty percent of the voting power of its membership interests entitled to vote for governors owned directly, or indirectly through organizations, by the specified limited liability company an organization having more than fifty percent of the voting power of its ownership interests entitled to vote for directors, governors, or other members of the governing body of the organization owned directly, or indirectly, through related organizations, by the specified organization.

36. "Surviving corporation" means the corporation or foreign corporation resulting from a merger which:

- a. May preexist the merger; or
- b. May be created by the merger.

37. "Vote" includes authorization by written action.

38. "Written action" means:

- a. A written record signed by all of the persons required to take the action; or
- b. The counterparts of a written record signed by any of the persons taking the action.
- (1) Each counterpart constitutes the action of the persons signing it; and
- (2) All the counterparts are one written action by all of the persons signing them.

**SECTION 60.** Section 10-33-01.3 of the North Dakota Century Code is created and enacted as follows:

**10-33-01.3. Reservation of legislative right.** The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A corporation incorporated under or governed by this chapter is subject to this reserved right.

<sup>54</sup> **SECTION 61. AMENDMENT.** Section 10-33-06 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-06. 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 name and address of each incorporator;
  - d. The effective date of the incorporation:
    - (1) If a later date than that on which the certificate of incorporation is issued by the secretary of state; and
    - (2) Which may not be later than ninety days after the date on which the certificate of incorporation is issued; and
  - e. A statement that the corporation is incorporated under this chapter.
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 articles govern a corporation unless modified by the articles:
  - a. A corporation has a general purpose of engaging in any lawful nonprofit activity as provided in section 10-33-04;
  - b. A corporation has perpetual existence and certain powers as provided in section 10-33-21;
  - c. The power to initially adopt, amend, or repeal the bylaws is vested in the board as provided in section 10-33-26;
  - d. Cumulative voting is prohibited as provided in section 10-33-34;
  - e. The affirmative vote of a majority of the directors present is required for an action of the board as provided in section 10-33-42;

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<sup>54</sup> Section 10-33-06 was also amended by section 42 of Senate Bill No. 2153, chapter 99.

- ~~e.~~ f. A written action by the board taken without a meeting must be signed by all directors as provided in section 10-33-43;
  - ~~f.~~ g. Members are of one class as provided in section 10-33-57; and
  - ~~g.~~ h. A written action by the members must be signed by all members as provided in section 10-33-73.
4. 3. The following provisions govern a corporation unless modified either in the articles or bylaws:
- a. A certain method must be used for amending the articles as provided in section 10-33-15;
  - b. Certain procedures apply to the adoption, amendment, or repeal of bylaws by the members as provided in section 10-33-26;
  - c. A director holds office for an indefinite term that expires upon the election of a successor as provided in section 10-33-30;
  - d. The term of a director filling a vacancy expires at the end of the term the director is filling as provided in section 10-33-30;
  - e. The compensation of directors is fixed by the board as provided in section 10-33-32;
  - f. The method provided in section 10-33-36 or 10-33-37 must be used for removal of directors;
  - g. The method provided in section 10-33-38 must be used for filling board vacancies;
  - h. Board meetings must be held at least once per year and 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 10-33-39;
  - i. 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 10-33-39;
  - j. A majority of the board is a quorum as provided in section 10-33-41;
  - k. The affirmative vote of the majority of directors present is required for board action as provided in section 10-33-42;
  - l. A committee ~~consist~~:
    - (1) Must consist of one or more persons, who need not be directors, appointed by the board as provided in section 10-33-44; and
    - (2) May create one or more subcommittees, each consisting of one or more members of the committee and may delegate to

the subcommittee any or all of the authority of the committee as provided in subsection 7 of section 10-33-44.

- m. Unless the articles or bylaws or a resolution adopted by the board, and not inconsistent with the articles or bylaws, provides otherwise, the officers shall have the duties provided in section 10-33-50;
- n. The method provided in section 10-33-54 must be used for removal of officers;
- o. If not prohibited by the board from doing so, officers may delegate some or all of their duties and powers as provided in section 10-33-55;
- p. A corporation does not have members as provided in section 10-33-57;
- q. The board may determine the consideration required to admit members as provided in section 10-33-57;
- r. All members are entitled to vote and have equal rights and preferences in matters as provided in section 10-33-57;
- s. Memberships are nontransferable except as provided in section 10-33-59;
- t. A corporation with voting members must hold a regular meeting of voting members annually as provided in section 10-33-65;
- u. If a specific minimum notice period has not been fixed by law, then at least five days' notice is required for a meeting of members as provided in section 10-33-68;
- v. The board may fix a date up to fifty days before the date of a members' meeting as the date for determination of the members entitled to notice of and entitled to vote at the meeting as provided in section 10-33-68;
- w. Each member has one vote as provided in section 10-33-71;
- x. The affirmative vote of the majority of members with voting rights present and entitled to vote is required for action of the members, unless this chapter or the articles or bylaws require a greater vote or voting by class as provided in section 10-33-72;
- y. Members may take action at a meeting by voice or ballot, by unanimous action without a meeting, by mailed ballot, or by electronic communication as provided in section 10-33-72;
- z. The number of members required for a quorum is ten percent of the members entitled to vote as provided in section 10-33-76;
- aa. The procedures provided in section 10-33-78 govern acceptance of member acts; and

- bb. Indemnification of certain persons is required as provided in section 10-33-84.
- ~~5.~~ 4. The following provisions relating to the management or regulation of the affairs of a corporation may be included in the articles or, except for naming members of the first board, in the bylaws:
- a. The first board of directors may be named in the articles as provided in section 10-33-25;
  - b. Additional qualifications for directors may be imposed as provided in section 10-33-29;
  - c. Terms of directors may be staggered as provided in section 10-33-30;
  - d. The date, time, and place of board meetings may be fixed as provided in section 10-33-39;
  - e. Additional officers may be designated as provided in section 10-33-49;
  - f. Additional powers, rights, duties, and responsibilities may be given to officers as provided in section 10-33-50;
  - g. A method for filling vacant offices may be specified as provided in section 10-33-54;
  - h. Membership criteria and procedures for admission may be established as provided in section 10-33-57;
  - i. Membership terms may be fixed as provided in section 10-33-57;
  - j. A corporation may issue membership certificates or preferred or common shares as the board deems appropriate as provided in section 10-33-58;
  - k. A corporation may levy dues, assessments, or fees on members as provided in section 10-33-60;
  - l. A corporation may buy memberships as provided in section 10-33-63;
  - m. A corporation may have delegates with some or all the authority of members as provided in section 10-33-64;
  - n. The date, time, and place of regular member meetings or the place of special meetings may be fixed as provided in section 10-33-65;
  - o. Certain persons may be authorized to call special meetings of members as provided in section 10-33-66;
  - p. Notices of special member meetings may be required to contain certain information as provided in section 10-33-68;

- q. A larger than majority vote may be required for member action as provided in section 10-33-72;
  - r. Members may vote by proxy as provided in section 10-33-77; and
  - s. Members may enter into voting agreements as provided in section 10-33-79.
- ~~6.~~ 5. The articles may contain other provisions consistent with law relating to the management or regulation of the affairs of the corporation.
- ~~7.~~ 6. It is not necessary to state the corporate powers granted by this chapter in the articles.
- ~~8.~~ 7. If there is a conflict between subsection 2, 3, or 4; or 5 and another section of this chapter, then the other section controls.
- ~~9.~~ 8. Subsection ~~5~~ 4 does not limit the right of the board, by resolution, to take an action that the bylaws may authorize under this subsection without including the authorization in the bylaws, unless the authorization is required to be in the bylaws by another provision of this chapter.
9. Except for provisions included pursuant to subsection 1, any provision of the articles may:
- a. Be made dependent upon facts ascertainable outside the articles, but only if the manner in which the facts operate upon the provision is clearly and expressly set forth in the articles; and
  - b. Incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the corporation, but only if the corporation retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

**SECTION 62. AMENDMENT.** Section 10-33-10 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-10. 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. Need not contain the word "company", "corporation", "incorporated", "limited", or an abbreviation of one or more of these words.
  - c. May not contain the words "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.
  - d. May not contain a word or phrase that indicates or implies that the corporation:



- (1) Is incorporated for a purpose other than:
    - (a) A lawful nonprofit purpose for which a corporation may be incorporated under this chapter; or
    - (b) For a purpose stated in its articles; or
  - (2) May not be incorporated under this chapter.
- e. May not be the same as or deceptively similar to:
- (1) The name, whether foreign and authorized to conduct activities in this state or domestic unless there is filed with the articles a record that complies with subsection 2, of:
    - (a) Another corporation;
    - (b) A corporation incorporated or authorized to do business in this state under another provision of this code;
    - (c) A limited liability company;
    - (d) A limited partnership;
    - (e) A limited liability partnership; or
    - (f) A limited liability limited partnership;
  - (2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - (3) A fictitious name registered in the manner provided in chapter 45-11; or
  - (4) A trade name registered in the manner provided in chapter 47-25.
2. The secretary of state shall determine whether a corporate name is "deceptively similar" to another name for purposes of this chapter.
  3. If the secretary of state determines that a corporate name is "deceptively similar" to another name for purposes of this chapter, then the corporate name may not be used unless there is filed with the articles:
    - a. The written consent of the holder of the rights to the name the proposed name is determined to be deceptively similar to; or
    - b. 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.
  4. Subsection 3 does not affect the right of a corporation existing on August 1, 1997, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.

5. This section and section 10-33-11 do not:
  - a. Abrogate or limit:
    - (1) The law of unfair competition or unfair practices;
    - (2) Chapter 47-25;
    - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, or service marks; or
    - (4) Any other rights to the exclusive use of names or symbols; or
  - b. Derogate the common law or the principles of equity.
6. A domestic or foreign corporation that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought to be used:
  - a. Was incorporated, organized, formed, or registered under the laws of this state;
  - b. Is authorized to conduct activities or transact business in this state;
  - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
  - e. Holds a trade name registered in the manner provided in chapter 47-25.
7. 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 conducting activities 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.
8. A corporation whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 10-33-139 may reacquire the right to use that name by refiling articles of incorporation pursuant to section 10-33-08 unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 2. A corporation that cannot reacquire the use of its corporate name must adopt a new corporate name that complies with the provisions of this section:

- a. By refiling articles of incorporation pursuant to section 10-33-08;
  - b. By amending pursuant to section 10-33-14; or
  - c. By reinstating pursuant to section 10-33-139.
9. Subject to section 10-33-126, this section applies to any foreign corporation transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.
10. An amendment that only changes the name of the corporation may be authorized by a resolution approved by the board and may, but need not, be submitted to and approved by the members as provided in section 10-33-15.

**SECTION 63. AMENDMENT.** Section 10-33-34 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-34. Cumulative voting for directors.** Unless the articles provide otherwise ~~or except as provided in article XII of the Constitution of North Dakota~~, there is no cumulative voting.

**SECTION 64.** A new subsection to section 10-33-44 of the North Dakota Century Code is created and enacted as follows:

Unless otherwise provided in the articles, the bylaws, or the resolution of the board establishing the committee, a committee may create one or more subcommittees, each consisting of one or more members of the committee, and may delegate to a subcommittee any or all of the authority of the committee. In this chapter, unless the language or context clearly indicates that a different meaning is intended:

- a. Any reference to a committee is deemed to include a subcommittee; and
- b. Any reference to a committee member is deemed to include any reference to a subcommittee member.

**SECTION 65.** Section 10-33-72.1 of the North Dakota Century Code is created and enacted as follows:

**10-33-72.1. Contractual requirement to submit a matter to the members.** A corporation may agree to submit a matter to its members whether or not the board determines, at any time after approving the matter, that the matter is no longer advisable and recommends that the members reject it.

**SECTION 66. AMENDMENT.** Section 10-33-73 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-73. Action Member action without a meeting by the members.** An action required or permitted to be taken at a meeting of the members may be taken without a meeting by written action signed, or consented to by authenticated electronic communication, by all of the members entitled to vote on that action.

1. If the articles so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, by the members who hold voting power equal to the voting power that would be required to take the same action at a meeting of the members at which all members were present. However, in no event may written action be taken by members who hold less than a majority of the voting power of all members entitled to vote on that action.
  - a. After the adoption of the initial articles, an amendment to the articles to permit written action to be taken by less than all members requires the approval of all members entitled to vote on the amendment.
  - b. When written action is permitted to be taken by less than all members, all members must be notified immediately of its text and effective date no later than five days after the effective time of the action.
  - c. Failure to provide the notice does not invalidate the written action.
  - d. A member who does not sign or consent to the written action has no liability for the action or actions taken by the written action.
2. The written action is effective when signed by the required members, unless a different effective time is provided in the written action.
3. When this chapter requires or permits a certificate concerning an action to be filed with the secretary of state, the certificate must indicate if the action was taken under this section.

**SECTION 67.** Section 10-34-02.1 of the North Dakota Century Code is created and enacted as follows:

**10-34-02.1. Reservation of legislative right.** The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A real estate investment trust formed under or governed by this chapter is subject to this reserved right.

<sup>55</sup> **SECTION 68. AMENDMENT.** Subsection 40 of section 45-10.2-02 of the North Dakota Century Code is amended and reenacted as follows:

40. "Signed" means:
  - a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the record, is placed on a record ~~as provided under section 44-01-14~~ with the present intention to authenticate that record; and

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<sup>55</sup> Section 45-10.2-02 was also amended by section 24 of House Bill No. 1035, chapter 354.

- b. With respect to a record required by this chapter to be filed with the secretary of state that:
  - (1) The record is signed by a person authorized to sign the record by this chapter, by the partnership agreement, or by a resolution approved by the affirmative vote of the required proportion or number of partners; and
  - (2) The signature and the record are communicated by a method or medium of communication acceptable by the secretary of state.

**SECTION 69.** Section 45-10.2-06.1 of the North Dakota Century Code is created and enacted as follows:

**45-10.2-06.1. Reservation of legislative right.** The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A limited partnership formed under or governed by this chapter is subject to this reserved right.

**SECTION 70. AMENDMENT.** Subsection 1 of section 45-10.2-27 of the North Dakota Century Code is amended and reenacted as follows:

1. A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the purpose of the record, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. If the secretary of state determines that a record complies with the filing requirements of this chapter, then the secretary of state shall file the record and, except for an annual report, return a copy of the filed record to the person that delivered it to the secretary of state for filing. That person shall then:
  - a. For a statement of dissociation, send a copy of the filed statement:
    - (1) To the person which the statement indicates has dissociated as a general partner; and
    - (2) To the limited partnership;
  - b. For a statement of withdrawal, send a copy of the filed statement:
    - (1) To the person on whose behalf the record was filed; and
    - (2) If the statement refers to an existing limited partnership, to the limited partnership; and
  - c. For all other records, send a copy of the filed record to the person on whose behalf the record was filed.

**SECTION 71. AMENDMENT.** Section 45-10.2-81 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-81. Foreign limited partnership - Amendments to the certificate of authority.** If any statement in the application for a certificate of authority by a foreign limited partnership is false when made or becomes false due to changed circumstances, or if the foreign limited partnership changes its name or purposes sought in this state, then the foreign limited partnership shall file with the secretary of

state an application for an amended certificate of authority signed by ~~an authorized person~~ at least one general partner correcting the statement and, in the case of a change in the name of the foreign limited partnership, a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign limited partnership is organized.

1. In the case of a dissolution, a foreign limited partnership need not file an application for an amended certificate of authority but shall promptly file with the secretary of state a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign limited partnership is organized.
2. A foreign limited partnership that changes its name and applies for an amended certificate of authority and which is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, is a general partner in another limited partnership or limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state, shall change the name of the foreign limited partnership in each of the foregoing registrations that is applicable when the foreign limited partnership files an application for an amended certificate of authority.
3. A foreign limited partnership shall report any change of address of the principal executive office to the secretary of state and need not file an application for amended certificate of authority.

<sup>56</sup> **SECTION 72. AMENDMENT.** Subsection 26 of section 45-13-01 of the North Dakota Century Code is amended and reenacted as follows:

26. "Signed" means:

- a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically or in any other manner reproduced on the record, is placed on a record; ~~as provided under section 41-01-11~~ with the present intention to authenticate that record; and
- b. With respect to a record required by this chapter to be filed with the secretary of state, that:
  - (1) The record is signed by a person authorized to do so by this chapter or by a resolution approved by the affirmative vote of the required proportion or number of partners; and
  - (2) The signature and the record are communicated by a method or medium of communication acceptable by the secretary of state.

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<sup>56</sup> Section 45-13-01 was also amended by section 25 of House Bill No. 1035, chapter 354.

**SECTION 73.** Section 45-13-02.1 of the North Dakota Century Code is created and enacted as follows:

**45-13-02.1. Reservation of legislative right.** The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A partnership formed under or governed by this chapter is subject to this reserved right.

**SECTION 74. AMENDMENT.** Subsection 6 of section 45-13-05 of the North Dakota Century Code is amended and reenacted as follows:

6. Any statement filed under this section must be renewed every five years from the date of the initial filing. A statement of renewal must be executed by the partnership ~~on a form furnished by the secretary of state which is sent to the address of the principal executive office at least sixty days before the deadline for filing in the same manner as previously executed.~~ If the secretary of state finds that the statement of renewal conforms to the requirements of this section, and the proper filing fee has been paid, the secretary of state shall file the statement of renewal. If the secretary of state finds that the statement of renewal does not so conform, the secretary of state shall return the statement of renewal to the partnership for any necessary corrections. If the statement of renewal is not returned corrected within thirty days after the statement of renewal was returned for correction, the statement ~~of renewal~~ is subject to cancellation. If any partnership fails to file the statement of renewal, the secretary of state shall cancel the initial statement and shall mail notice of the cancellation to the last address of the principal executive office as recorded in the office of the secretary of state.

<sup>57</sup> **SECTION 75. AMENDMENT.** Subsection 24 of section 45-22-01 of the North Dakota Century Code is amended and reenacted as follows:

24. "Signed" means:
  - a. That the signature of a person which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by telecommunication or electronically, or in any other manner reproduced on the record, is placed on a record; ~~as provided under section 41-01-14~~ with the present intention to authenticate that record; and
  - b. With respect to a record required by this chapter to be filed with the secretary of state means that:
    - (1) The record is signed by a person authorized to do so by this chapter, or by or pursuant to an agreement among the partners, or by a resolution approved by the affirmative vote of the required proportion or number of partners; and

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<sup>57</sup> Section 45-22-01 was also amended by section 26 of House Bill No. 1035, chapter 354.

- (2) The signature and the record are communicated by a method or medium of communication acceptable by the secretary of state.

<sup>58</sup> **SECTION 76. AMENDMENT.** Subsection 2 of section 45-22-22 of the North Dakota Century Code is amended and reenacted as follows:

2. The secretary of state shall charge and collect for:
  - a. Furnishing a copy of any record or paper relating to a domestic limited liability partnership or foreign limited liability partnership, one dollar for every four pages, or fraction of pages.
  - b. A certificate certifying a copy or reciting facts related to a domestic limited liability partnership or foreign limited liability partnership, ~~twenty~~ fifteen dollars.
  - c. Each page of any record or form sent by electronic transmission, one dollar.

<sup>59</sup> **SECTION 77. AMENDMENT.** Subsection 24 of section 45-23-01 of the North Dakota Century Code is amended and reenacted as follows:

24. "Signed" means:
  - a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the record, is placed on a record, ~~as provided under section 41-01-11~~ with the present intention to authenticate that record; and
  - b. With respect to a record required by this chapter to be filed with the secretary of state, that:
    - (1) The record is signed by a person authorized to sign by this chapter, or pursuant to an agreement among the partners, or by a resolution approved by the affirmative vote of the required proportion or number of partners; and
    - (2) The signature and the record are communicated by a method or medium acceptable by the secretary of state.

Approved April 10, 2007  
Filed April 11, 2007

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<sup>58</sup> Section 45-22-22 was also amended by section 81 of Senate Bill No. 2153, chapter 99.

<sup>59</sup> Section 45-23-01 was also amended by section 27 of House Bill No. 1035, chapter 354.



## CHAPTER 102

### HOUSE BILL NO. 1340

(Representatives Klemin, DeKrey, Delmore)  
(Senators Grindberg, Nelson, Nething)

## PUBLICLY TRADED CORPORATIONS

AN ACT to create and enact chapter 10-35 of the North Dakota Century Code, relating to publicly traded corporations; and to amend and reenact section 54-09-08 of the North Dakota Century Code, relating to the secretary of state's general services operating fund.

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

**SECTION 1.** Chapter 10-35 of the North Dakota Century Code is created and enacted as follows:

**10-35-01. Citation.** This chapter may be cited as the "North Dakota Publicly Traded Corporations Act".

**10-35-02. Definitions.** For purposes of this chapter, unless the context otherwise requires:

1. "Beneficial owner", "owns beneficially", and similar terms have the same meaning as in the rules and regulations of the commission under section 13 of the Exchange Act.
2. "Commission" means the United States securities and exchange commission.
3. "Exchange Act" means the Securities Exchange Act of 1934, as amended [15 U.S.C. section 78a et seq.].
4. "Executive officer" has the same meaning as in the rules and regulations of the commission under the Exchange Act.
5. "Poison pill" means a security created or issued by a publicly traded corporation that precludes or limits a person or group of persons from owning beneficially or of record, or from exercising, converting, transferring, or receiving, the security on the same terms as other shareholders or which is intended to have the effect of diluting disproportionately from the shareholders generally the interest of the person or group of persons in the corporation or a successor to the corporation or otherwise discouraging the person or group of persons from acquiring beneficial ownership of shares of the corporation or a successor to the corporation. For the purposes of this subsection:
  - a. A security may constitute a poison pill whether or not it trades separately or together with other securities of the corporation and whether or not it is evidenced by a separate certificate or by a certificate for other securities of the corporation.

- b. "Poison pill" includes any form of security created or issued by a corporation, or any agreement or arrangement entered into by a corporation, regardless of the name by which it is known, that is designed or intended to operate as or that has the effect of what is commonly referred to, either on July 1, 2007, or at any time thereafter, as a "poison pill" or "shareholder rights plan".
  - c. A security is not a poison pill if it would otherwise be a poison pill solely because it contains restrictions on ownership or acquisition of shares of the corporation that are necessary:
    - (1) To maintain the tax status of the corporation; or
    - (2) For the corporation to comply with a statute, rule, or regulation that regulates a business in which the corporation is engaged.
  - d. "Security" includes:
    - (1) An investment contract, warrant, option right, conversion right, or any other form of right or obligation;
    - (2) A "security" within the meaning of that term in the Exchange Act, the Securities Act of 1933, as amended [15 U.S.C. section 77a et seq.], the rules and regulations of the commission, or judicial interpretations under any of the foregoing;
    - (3) Any other ownership interest or right to acquire an ownership interest;
    - (4) Any other instrument commonly known as a "security"; and
    - (5) Any instrument or contract right created or issued by a publicly traded corporation, whether or not the instrument or contract right is a security under any other provision of law.
6. "Publicly traded corporation" or "corporation" means a corporation as defined in section 10-19.1-01:
- a. That becomes governed by chapter 10-19.1 after July 1, 2007; and
  - b. The articles of which state that the corporation is governed by this chapter.
7. "Publicly traded corporation franchise fee" means the fee imposed by subsection 3 of section 10-35-28.
8. "Qualified shareholder" means a person or group of persons acting together that satisfies the following requirements:
- a. The person or group owns beneficially in the aggregate more than five percent of the outstanding shares of the publicly traded corporation that are entitled to vote generally for the election of directors; and

- b. The person or each member of the group has beneficially owned the shares that are used for purposes of determining the ownership threshold in subdivision a continuously for at least two years.
9. "Required vote" means approval of a provision of the articles or bylaws, at a time when the publicly traded corporation has a class of voting shares registered under the Exchange Act, by at least the affirmative vote of both:
- a. A majority of the directors in office who are not executive officers of the corporation; and
  - b. Two-thirds of the voting power of the outstanding shares entitled to vote generally for the election of directors that are not owned beneficially or of record by directors or executive officers of the corporation.

**10-35-03. Application and effect of chapter.**

- 1. This chapter applies only to a publicly traded corporation meeting the definition of a "publicly traded corporation" in section 10-35-02 during such time as its articles state that it is governed by this chapter.
- 2. The existence of a provision of this chapter does not of itself create any implication that a contrary or different rule of law is or would be applicable to a corporation that is not a publicly traded corporation. This chapter does not affect any statute or rule of law as it applies to a corporation that is not a publicly traded corporation.
- 3. A provision of the articles or bylaws of a publicly traded corporation may not be inconsistent with any provision of this chapter.
- 4. The computation of a percentage of shares owned beneficially or of record by a person or group of persons for purposes of this chapter or chapter 10-19.1 shall be based on the number of outstanding shares of the publicly traded corporation shown most recently in a filing by the corporation with the commission under the Exchange Act.

**10-35-04. Application of chapter 10-19.1.**

- 1. Chapter 10-19.1 applies generally to all publicly traded corporations, except that the provisions of this chapter control over any inconsistent provision of chapter 10-19.1.
- 2. A publicly traded corporation is a "publicly held corporation" as that term is used in chapter 10-19.1.
- 3. The definitions in section 10-19.1-01 apply to the use in this chapter of the terms defined in that section.

**10-35-05. Amendment of the bylaws.**

- 1. Any shareholder of a publicly traded corporation may propose the adoption, amendment, or repeal of a bylaw.

2. Subdivision c of subsection 3 of section 10-19.1-31 shall not apply to a publicly traded corporation except that a provision of the articles or bylaws authorized by section 10-35-14 may apply to a proposal to adopt, amend, or repeal a bylaw.

#### **10-35-06. Board of directors.**

1. The articles or bylaws of a publicly traded corporation may not fix a term for directors longer than one year.
2. The articles or bylaws of a publicly traded corporation may not stagger the terms of directors into groups whose terms end at different times.
3. The size of the board of a publicly traded corporation may not be changed at a time when:
  - a. The board has notice that there will be a contested election of directors at the next regular or special meeting of the shareholders; or
  - b. The shareholders do not have the right to nominate candidates for election at the next regular meeting of the shareholders under a provision of the articles or bylaws adopted pursuant to section 10-35-07.
4. The board of a publicly traded corporation must elect one of its members as the chair of the board who shall preside at meetings of the board and perform such other functions as may be provided in the articles or bylaws or by resolution of the board. The chair of the board may not serve as an executive officer of the corporation.

#### **10-35-07. Nomination of directors.**

1. A publicly traded corporation may not require a shareholder or beneficial owner of shares to provide notice of an intention to nominate a candidate for election as a director except as provided in a provision of the articles or bylaws that satisfies the requirements of this section.
2. A provision of the articles or bylaws of a publicly traded corporation requiring a shareholder or beneficial owner to provide notice of an intention to nominate a candidate for election as a director may not require the notice to include more than:
  - a. The name of the shareholder or beneficial owner;
  - b. A statement that the shareholder or beneficial owner is the beneficial owner of one or more shares in the corporation and reasonable evidence of that ownership; and
  - c. The number of candidates the shareholder or beneficial owner intends to nominate.
3. Any deadline fixed by the articles or bylaws for submission by a shareholder or beneficial owner of a notice of intention to nominate a candidate for election as a director may not be earlier than:

- a. In the case of a meeting held within five business days before or after the anniversary of the previous year's regular meeting, ninety days before the anniversary date of the prior regular meeting; or
  - b. In the case of a meeting not held within five business days before or after the anniversary of the previous year's regular meeting ninety days before the date of the meeting.
4. A provision of the articles or bylaws requiring a shareholder or beneficial owner to provide notice of an intention to nominate a candidate for election as a director must provide a period of at least twenty days during which the shareholder or beneficial owner may submit the notice to the public corporation.
5. The adoption or amendment of a bylaw requiring advance notice of nominations may not take effect in the one hundred twenty-day period before the next meeting of shareholders, unless the adoption or amendment of the bylaw has been approved by the shareholders.

**10-35-08. Access to corporation's proxy statement.**

1. If a qualified shareholder provides notice of an intention to nominate one or more candidates for election to the board of directors that satisfies both section 10-35-07 and this section, the publicly traded corporation must:
  - a. Include the name of each nominee and a statement not longer than five hundred words without counting the information required under subdivisions a through e of subsection 2 supplied by the qualified shareholder in support of each nominee in the corporation's proxy statement; and
  - b. Make provision for a shareholder to vote on each nominee on the form of proxy solicited on behalf of the corporation.
2. The publicly traded corporation may not require the notice from the qualified shareholder to include more than:
  - a. The name of the person or the names of the members of the group;
  - b. A statement that the person or group satisfies the definition of a qualified shareholder in subsection 8 of section 10-35-02 and reasonable evidence of the required ownership of shares by the person or group;
  - c. A statement that the person or group does not have knowledge that the candidacy or, if elected, board membership of any of its nominees would violate controlling state or federal law or rules other than rules regarding director independence of a national securities exchange or national securities association applicable to the corporation;
  - d. The information regarding each nominee that is required to be included in the corporation's proxy statement by the rules and regulations adopted by the commission under the Exchange Act;

- e. A statement from each nominee that the nominee consents to be named in the corporation's proxy statement and form of proxy and, if elected, to serve on the board of directors of the corporation, for inclusion in the corporation's proxy statement; and
  - f. The supporting statement permitted by subdivision a of subsection 1.
3. If the qualified shareholder does not own at least five percent of the outstanding shares of the publicly traded corporation entitled to vote generally for the election of directors on the date of the meeting, the qualified shareholder is not entitled to nominate the candidates named in the notice provided under subsection 1.

#### **10-35-09. Election of directors.**

1. After a quorum is established at a meeting of the shareholders of a publicly traded corporation at which directors are to be elected, the polls must be opened for the election of directors before the meeting may be recessed or adjourned. If the polls have not been previously closed, the polls close for the election of directors upon the first recess or adjournment of the meeting.
2. Except as provided in subsection 3, if the articles of a publicly traded corporation provide that the shareholders do not have the right to cumulate their votes in an election of directors:
- a. Each share in the corporation entitled to vote on the election of directors shall be entitled to vote noncumulatively for or against, or to abstain with respect to, each candidate for election.
  - b. To be elected, a candidate must receive the affirmative vote of at least a majority of the votes cast for or against the candidate's election.
  - c. An individual who is not elected under subdivision b may not be appointed by the board of directors to fill a vacancy on the board at any time thereafter unless the individual is subsequently elected as a director by the shareholders.
  - d. If a director who was a candidate for reelection is not elected under subdivision b, the director may continue to serve under subdivision b of subsection 1 of section 10-19.1-35 for not longer than ninety days after the date of the first public announcement of the results of the election.
  - e. If no directors are elected under subdivision b, the current directors continue to serve under subdivision b of subsection 1 of section 10-19.1-35, and another meeting of the shareholders for the election of directors must be held not later than eighty-nine days after the date of the first public announcement of the results of the election.
3. Subsection 2 does not apply to an election of directors by a voting group if there are more candidates for election by the voting group than the number of directors to be elected by the voting group and one or more

of the candidates has been properly nominated by the shareholders. An individual is not counted as a candidate for election under this subsection if the board of directors reasonably determines before the notice of meeting is given that the individual's candidacy does not create a bona fide election contest. The determination of the number of candidates for purposes of this subsection shall be made as of:

- a. The expiration of the time fixed by the articles or bylaws for advance notice by a shareholder of an intention to nominate directors; or
  - b. Absent such a provision at a time publicly announced by the board of directors which is not more than fourteen days before notice is given of the meeting at which the election is to occur.
4. A publicly traded corporation may not compensate an individual, directly or indirectly, as a result of the fact, in whole or in part, that the individual is not elected or reelected as a director, and without regard to whether the compensation would be paid to the individual as a director or officer or on any other basis.
5. The shareholders of a publicly traded corporation may act by consent in a record to elect directors, but the consent will be in lieu of a regular meeting of shareholders only if:
- a. The shareholders are not entitled to vote cumulatively for the election of directors;
  - b. The election by consent takes effect within the one hundred twenty-day period before the anniversary of the most recent regular meeting; and
  - c. The full board is elected by the consent.

**10-35-10. Reimbursement of proxy expenses.**

1. A shareholder of a publicly traded corporation who nominates one or more candidates for election as directors who are not nominated by management or the board of directors must be reimbursed by the corporation for the reasonable actual costs of solicitation of proxies incurred by the shareholder in an amount equal to the shareholder's total reasonable actual costs of solicitation multiplied by a fraction, the numerator of which is the number of candidates nominated by the shareholder who are elected, and the denominator of which is the total number of candidates nominated by the shareholder.
2. As used in this section, "actual costs of solicitation" means amounts paid to third parties relating to the solicitation, including lawyers, proxy solicitors, public relations firms, printers, the United States postal service, and media outlets.

**10-35-11. Supermajority provisions prohibited.** Neither the articles nor the bylaws of a publicly traded corporation may provide a quorum or voting requirement:

1. For the board or a committee of the board that is greater than a majority of the number of directors that would constitute the full board or committee assuming there are no vacancies; or
2. For shareholders that is greater than a majority of the voting power of the shares entitled to vote on the item of business or, in the case of a class or series entitled to vote as a separate group, a majority of the voting power of the outstanding shares of the class or series.

#### **10-35-12. Regular meeting of shareholders.**

1. Unless directors are elected by consent in lieu of a regular meeting as provided in subsection 5 of section 10-35-09, a publicly traded corporation must hold a meeting of shareholders annually for the election of directors and the conduct of such other business as may be properly brought before the meeting by the board or the shareholders.
2. The articles or bylaws of a publicly traded corporation must state the latest date in each calendar year by which the regular meeting of shareholders must be held. The date so fixed by the articles or bylaws may not be later than one hundred eighty days after the end of the prior fiscal year of the corporation.
3. Any shareholder of a publicly traded corporation may demand a regular meeting of shareholders under subsection 2 of section 10-19.1-71 or apply for an order of court directing the holding of a regular meeting of shareholders under section 10-19.1-72.1, in each case without regard to the percentage of the voting power held by the shareholder.
4. An amendment of the bylaws of a publicly traded corporation that changes the latest date by which the regular meeting of shareholders must be held may not take effect until after the regular meeting has been held for the year during which the amendment is adopted, unless the amendment has been approved by the shareholders.
5. The committee of the board of a publicly traded corporation that has authority to set the compensation of executive officers must report to the shareholders at each regular meeting of shareholders on the compensation of the corporation's executive officers. The shareholders that are entitled to vote for the election of directors shall also be entitled to vote on an advisory basis on whether they accept the report of the committee.

#### **10-35-13. Call of special meeting of shareholders.**

1. A publicly traded corporation shall hold a special meeting of shareholders upon the demand of its shareholders as provided in section 10-19.1-72, except that, regardless of the purpose for the meeting, the shareholders demanding the meeting must own beneficially ten percent or more of the voting power of all shares entitled to vote on each issue proposed to be considered at the special meeting.
2. The articles or bylaws of a publicly traded corporation may not restrict:
  - a. The period during which shareholders may call a special meeting of shareholders; or



- b. The business that may be conducted at a special meeting.

**10-35-14. Shareholder proposals of business at a regular meeting.**

1. A publicly traded corporation may not require a shareholder or beneficial owner to provide notice of an intention to propose a matter for consideration or a vote at a regular meeting of shareholders except as provided in a provision of the article or bylaws that satisfies the requirements of this section.
2. A provision of the articles or bylaws requiring a shareholder or beneficial owner to provide notice of an intention to propose a matter for consideration or a vote by the shareholders may not require the notice to include more than:
  - a. The name of the shareholder or beneficial owner;
  - b. A statement that the shareholder or beneficial owner is the beneficial owner of one or more shares in the corporation and reasonable evidence of that ownership; and
  - c. The general nature of the business to be proposed.
3. Any deadline fixed by the articles or bylaws for submission by a shareholder or beneficial owner of a notice of intention to propose a matter for consideration or a vote by the shareholders may not be earlier than:
  - a. In the case of a meeting held within five business days before or after the anniversary of the previous year's regular meeting, ninety days before the anniversary date of the prior regular meeting; or
  - b. In the case of a meeting not held within five business days before or after the anniversary of the previous year's regular meeting ninety days before the date of the meeting.
4. A provision of the articles or bylaws requiring a shareholder or beneficial owner to provide notice of an intention to propose a matter for consideration or a vote by the shareholders must provide a period of at least twenty days during which the shareholder or beneficial owner may submit the notice to the publicly traded corporation.
5. The adoption or amendment of a bylaw requiring advance notice of business to be proposed by a shareholder or beneficial owner may not take effect in the one hundred twenty-day period before the next regular meeting of shareholders, unless the adoption or amendment of the bylaw has been approved by the shareholders.
6. This section does not apply to the proposal by a shareholder or beneficial owner of an amendment of the articles of a publicly traded corporation.

**10-35-15. Shareholder proposals of amendment of the articles.**

1. A proposal of an amendment of the articles of a publicly traded corporation by a shareholder or shareholders under subsection 2 of section 10-19.1-19 need not include more than:
  - a. The name of the shareholder or the names of the members of the group of shareholders;
  - b. A statement of the number of shares of each class owned beneficially or of record by the shareholder or group of shareholders and reasonable evidence of that ownership; and
  - c. The text of the proposed amendment.
2. The articles or bylaws of a publicly traded corporation may not impose any requirements on the proposal of an amendment of the articles by a shareholder.
3. An amendment proposed by a shareholder or shareholders pursuant to subsection 1 and approved by the shareholders does not need to be approved by the board to be adopted and become effective.

**10-35-16. Requirements for convening shareholder meetings.**

1. If the articles or bylaws of a publicly traded corporation have a provision for advance notice authorized by section 10-35-07 or 10-35-14, a regular meeting of shareholders of the corporation may not be convened unless the corporation has announced the date of the meeting in the body of a public filing, and not solely in an exhibit or attachment to a filing, regardless of whether the exhibit or attachment has been incorporated by reference into the body of the filing, with the commission under the Exchange Act at least twenty-five days before the deadline in the articles or bylaws for a shareholder to give the advance notice.
2. If a proxy is given authority by a shareholder of a publicly traded corporation to vote on less than all items of business considered at a meeting of shareholders, the shareholder is considered to be present and entitled to vote by the proxy on all items of business to be considered at the meeting for purposes of determining the existence of a quorum under section 10-19.1-76. A proxy who is given authority by a shareholder who abstains with respect to an item of business is considered to have authority to vote on the item of business for purposes of this subsection.

**10-35-17. Approval of certain issuances of shares.**

1. An issuance by a publicly traded corporation of shares, or other securities convertible into or rights exercisable for shares, in a transaction or a series of integrated transactions, requires approval of the shareholders if the voting power of the shares that are issued or issuable as a result of the transaction or series of integrated transactions will exceed twenty percent of the voting power of the

shares of the corporation which were outstanding immediately before the transaction.

2. Subsection 1 does not apply to:

- a. A public offering solely for cash, cash equivalents or a combination of cash and cash equivalents; or
- b. A bona fide private financing, solely for cash, cash equivalents or a combination of cash and cash equivalents, of:
  - (1) Shares at a price equal to at least the greater of the book or market value of the corporation's common shares; or
  - (2) Other securities or rights if the conversion or exercise price is equal to at least the greater of the book or market value of the corporation's common shares.

3. For purposes of this section:

- a. The voting power of shares issued and issuable as a result of a transaction or series of integrated transactions shall be the greater of:
  - (1) The voting power of the shares to be issued; or
  - (2) The voting power of the shares that would be outstanding after giving effect to the conversion of convertible shares and other securities and the exercise of rights to be issued.
- b. A series of transactions is integrated if consummation of one transaction is made contingent on consummation of one or more of the other transactions.
- c. "Bona fide private financing" means a sale in which:
  - (1) A registered broker-dealer purchases the shares, other securities, or rights from the publicly traded corporation with a view to their private sale to one or more purchasers; or
  - (2) The corporation sells the shares, other securities, or rights to multiple purchasers, and no one purchaser or group of related purchasers acquires, or has the right to acquire, more than five percent of the voting power of shares issued or issuable in the transaction or series of integrated transactions.

**10-35-18. Preemptive rights.** Unless otherwise provided in the articles, a shareholder of a publicly traded corporation does not have the preemptive rights provided in section 10-19.1-65.

**10-35-19. Conduct and business of shareholder meetings.**

- 1. There must be a presiding officer at every meeting of the shareholders of a publicly traded corporation. The presiding officer must be appointed in the manner provided in the articles or bylaws or, in the

absence of such a provision, by the board before the meeting or by the shareholders at the meeting. If the articles or bylaws are silent on the appointment of a presiding officer and the board and the shareholders fail to designate a presiding officer, the president is the presiding officer.

2. Except as otherwise provided in the articles or bylaws or, in the absence of such a provision, by the board before the meeting, the presiding officer determines the order of business and has the authority to establish rules for the conduct of the meeting.
3. The order of business and rules for the conduct of a meeting and any action by the presiding officer must:
  - a. Be reasonable;
  - b. Be fair to all of the shareholders; and
  - c. May not favor or disadvantage the proponent of any action to be taken at the meeting.
4. The presiding officer may announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls close upon the final adjournment of the meeting, except as provided in subsection 1 of section 10-35-09. After the polls close, ballots, proxies, and votes may not be accepted, and changes and revocations of ballots, proxies, or votes may not be made.

**10-35-20. Action by shareholders without a meeting.**

1. An action required or permitted to be taken at a meeting of the shareholders of a publicly traded corporation may be taken without a meeting by one or more records signed by shareholders who own voting power equal to the voting power that would be required to take the same action at a meeting of the shareholders at which all shareholders were present.
2. Action may not be taken by a publicly traded corporation by ballot of its shareholders without a meeting.

**10-35-21. Financial statements.** Section 10-19.1-85 does not apply to a publicly traded corporation.

**10-35-22. Duration of poison pills limited.**

1. If a publicly traded corporation adopts, creates, or issues a poison pill without a vote of its shareholders authorizing that action, the poison pill must expire or be redeemed and will otherwise be of no further force or effect not later than the earlier of:
  - a. One year after the date of its adoption, creation, or issuance; or
  - b. Ninety days after the first public announcement that a number of shares have been tendered into an offer to purchase any and all shares of the corporation, which number of shares tendered represents at least a majority of the outstanding shares of each class or series of shares entitled to vote generally for the election

of directors when added to those shares owned beneficially or of record by the person or group of persons making the offer or by any affiliates of that person or group of persons.

2. If authorized by a vote of its shareholders, a publicly traded corporation may:
  - a. Adopt, create, or issue a poison pill that will be in effect for a period not longer than the shorter of:
    - (1) Two years; and
    - (2) The period set forth in subdivision b of subsection 1; or
  - b. Extend the period during which a poison pill adopted, created, or issued pursuant to subsection 1 will be in effect to not longer in the aggregate than the period set forth in subdivision a.
3. A publicly traded corporation may not adopt, create, or issue a poison pill without the approval of its shareholders until after it has held a regular meeting of shareholders after its most recent prior poison pill has expired or been redeemed and otherwise ceased to be of any force or effect. The date of the regular meeting of shareholders must:
  - a. Comply with section 10-35-12;
  - b. Be at least ninety days after the date on which the prior poison pill expired, was redeemed, or otherwise ceased to be of any force or effect; and
  - c. If the corporation has an advance notice requirement adopted pursuant to section 10-35-07, give the shareholders the full period of time required by subsection 4 of section 10-35-07 in which to provide notice to the corporation of an intention to nominate candidates for election at the meeting.

**10-35-23. Protection of power of current directors over poison pill.** A poison pill adopted, created, or issued by a publicly traded corporation, with or without the approval of its shareholders, may not include a provision that limits in any way the power of the board of directors, as it may be constituted at any point in time, to take any action at any time with respect to the poison pill, including without limitation what is commonly referred to as a "dead hand", "no hand", or "slow hand" provision.

**10-35-24. Minimum share ownership triggering level for poison pills.** A poison pill adopted, created, or issued by a publicly traded corporation, with or without the approval of its shareholders, may not provide that beneficial ownership or announcement of an intention to seek beneficial ownership by a person or group of persons of shares equal to less than twenty percent of the total number of outstanding shares of all classes and series of shares of the corporation will result, either immediately or after the passage of a period of time, in:

1. A distribution or distribution date for rights certificates or other securities as defined in subdivision d of subsection 5 of section 10-35-02;

2. The person or group of persons becoming what is commonly referred to as an "acquiring person" or "adverse person" or otherwise having the status of a person intended to be diluted or subject to dilution by the poison pill;
3. What is commonly referred to as a "flip-in" or "flip-over" event or the poison pill otherwise being triggered or becoming operative; or
4. The poison pill otherwise having a dilutive, discriminatory, or other adverse effect on the person or group of persons.

**10-35-25. Optional restrictions or prohibitions on poison pills.**

1. A provision of the articles or bylaws of a publicly traded corporation may restrict or prohibit the corporation from adopting, creating, or issuing a poison pill. Such a provision may provide for the effect it has on a poison pill in force at the time of the provision's adoption.
2. A provision of the articles or bylaws adopted pursuant to subsection 1 at a time when a publicly traded corporation has a poison pill in effect must be adopted by the affirmative vote of a majority of the outstanding shares entitled to vote on adoption of the provision. In every other instance, a provision of the articles or bylaws adopted pursuant to subsection 1 must be adopted by the affirmative vote of a majority of the votes cast by holders of shares entitled to vote on adoption of the provision.

**10-35-26. Adoption of antitakeover provisions.**

1. The articles or bylaws of a publicly traded corporation may not contain an antitakeover provision unless it has been approved by the required vote.
2. As used in this section:
  - a. Except as provided in subdivision b, "antitakeover provision" means a provision that:
    - (1) Would block an acquisition by any person or group of persons of beneficial ownership of any shares of the corporation or a change in control of the corporation absent compliance with the provision;
    - (2) Restricts the price that may be paid by any person or group of persons in an acquisition of beneficial ownership of any shares of the corporation;
    - (3) Restricts the terms of a transaction after the occurrence of a change in control of the corporation or limits the price that may be paid in such a transaction, when it may be conducted, or how it must be approved by the directors or shareholders;
    - (4) Requires an approval of the directors or shareholders in addition to, or in a different manner from, whatever approvals are required under this chapter and chapter

10-19.1 for a transaction involving an acquisition by any person or group of persons of beneficial ownership of any shares of the corporation or a change in control of the corporation;

- (5) Requires the approval of a nongovernmental third party for an acquisition by any person or group of persons of beneficial ownership of any shares of the corporation or a transaction that would involve a change in control of the corporation;
  - (6) Requires the corporation, directly or indirectly, to take an action that it would not have been required to take if it had not been the subject of an acquisition by any person or group of persons of beneficial ownership of any of its shares or a transaction that would involve a change in control of the corporation;
  - (7) Limits, directly or indirectly, the power of the corporation if it is the subject of an acquisition by any person or group of persons of beneficial ownership of any of its shares or a transaction that would involve a change in control of the corporation to take an action that the corporation would have had the power to take, without that limit, if the acquisition of beneficial ownership or transaction had not occurred;
  - (8) Changes or limits the voting rights of any shares of the corporation following a transaction involving an acquisition by any person or group of persons of beneficial ownership of any shares of the corporation or a change in control of the corporation;
  - (9) Would give any beneficial or record owner of shares of the corporation a direct right of action against a person or group of persons with respect to the acquisition by the person or group of persons of beneficial ownership of any shares in the corporation or control of the corporation; or
  - (10) Is designed or intended to operate as, or that has the effect of, what is commonly referred to, either on July 1, 2007, or at any time thereafter, as a "business combination", "control share acquisition", "control share cash out", "freeze out", "fair price", "disgorgement", or other "antitakeover" provision.
- b. "Antitakeover provision" does not include a provision in the terms of a class or series of shares:
- (1) If the shares are issuable upon the exercise of a poison pill, but only so long as the shares of the class or series are not issued by the corporation except pursuant to the exercise of a poison pill; or
  - (2) Which serves to protect dividend, interest, sinking fund, conversion, exchange, or other rights of the shares, or to protect against the issuance of additional securities that would be on a parity with or superior to the shares.

- c. "Control" has the same meaning as in the rules and regulations of the commission under the Exchange Act.

**10-35-27. Liberal construction.** The provisions of this chapter and of chapter 10-19.1 must be liberally construed to protect and enhance the rights of shareholders in publicly traded corporations.

**10-35-28. Annual report - Franchise fee.**

1. Instead of filing an annual report under section 10-19.1-146, each publicly traded corporation shall file under this section, within the time provided in section 10-35-29, an annual report setting forth:
  - a. The name of the publicly traded corporation;
  - b. A statement that it is a publicly traded corporation;
  - c. The name of the publicly traded corporation's registered agent and the address of the registered office of the publicly traded corporation;
  - d. The address of the principal executive office of the publicly traded corporation;
  - e. A brief statement of the character of the business, if any, in which the publicly traded corporation is actually engaged in this state; and
  - f. The names and respective business addresses of the executive officers and directors of the publicly traded corporation.
2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as provided in subsection 52 of section 10-19.1-01, the articles or the bylaws, or by a resolution approved by the affirmative vote of the required proportion or number of the directors. If the publicly traded corporation is in the hands of a receiver or trustee, it must be signed on behalf of the publicly traded corporation by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.
3. Instead of the fees provided for annual report filings in section 10-19.1-147, the secretary of state shall collect a franchise fee with the annual report from every publicly traded corporation for each calendar year in an amount equal to sixty dollars for each ten thousand shares of authorized capital stock of the publicly traded corporation.
  - a. In the case of a publicly traded corporation that has not been a publicly traded corporation during an entire twelve-month calendar year, the amount of the publicly traded corporation franchise fee due, as provided in this section, shall be prorated on a monthly basis for the portion of the year during which the publicly traded corporation was a publicly traded corporation. For this purpose, any portion of a month shall be regarded as a whole month.



- b. In no case shall the publicly traded corporation franchise fee imposed by this section be more than eighty thousand dollars or less than sixty dollars.
- c. If a publicly traded corporation changes during a calendar year the number of shares of its authorized capital stock, the total annual publicly traded corporation franchise fee payable as provided in this section shall be arrived at by adding together the franchise fees calculated as set forth in this section as prorated for the several periods of the year during which each distinct authorized amount of shares of capital stock was in effect.
- d. For the purpose of computing the franchise fee imposed by this section, the authorized capital stock of a publicly traded corporation shall be considered to be the total number of shares of all classes and series that the public corporation is authorized to issue, whether or not the number of shares that may be outstanding at any one time is a lesser number.
- e. Except as provided in this subsection, the publicly traded corporation franchise fee shall be in addition to any other taxes or fees imposed by this state on the publicly traded corporation.

**10-35-29. Filing of annual report and payment of publicly traded corporation franchise fee.**

- 1. Except for the first annual report and publicly traded corporation franchise fee, the annual report and publicly traded corporation franchise fee must be delivered to the secretary of state before December second of each year. The first annual report and payment of the publicly traded corporation franchise fee must be delivered before the date provided in the year following the calendar year in which the statement described in subdivision b of subsection 6 of section 10-35-02 takes effect.
- 2. An annual report and publicly traded corporation franchise fee in a sealed envelope postmarked by the United States postal service before the date provided in subsection 1, or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in subsection 1, is compliance with this requirement. When the filing date falls on Saturday, Sunday, or other holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day is compliance with this requirement.
- 3. The secretary of state must file the annual report if the annual report conforms to the requirements of section 10-35-28 and the publicly traded corporation franchise fee has been paid.
  - a. If the annual report does not conform or adequate payment has not been made, the secretary of state must notify the publicly traded corporation of any necessary corrections or payment.
  - b. If the annual report is corrected and filed with the payment before the date provided in subsection 1, or within thirty days after the publicly traded corporation was notified of corrections or payment by the secretary of state, then the penalties provided in section

10-35-31 for failure to file an annual report within the time provided do not apply.

4. The secretary of state may extend the annual report filing date provided in subsection 1 for a period not to exceed eleven months after the filing date provided in subsection 1 if a written application for an extension is delivered before the date provided in subsection 1.

**10-35-30. Collection of publicly traded corporation franchise fee - Preferred debt.** The publicly traded corporation franchise fee shall be a debt due from the publicly traded corporation to the state for which an action at law may be maintained after the same shall have been in arrears for a period of one month. The publicly traded corporation franchise fee shall also be a preferred debt in case of insolvency.

**10-35-31. Penalties - Administrative dissolution.**

1. The secretary of state shall charge and collect additional fees for late filing of the annual report and payment of the publicly traded corporation franchise fee as follows:
  - a. Within ninety days after the date provided in subsection 1 of section 10-35-29, two hundred fifty dollars.
  - b. Ninety days after the date provided in subsection 1 of section 10-35-29, the publicly traded corporation becomes not in good standing. The secretary of state shall notify the publicly traded corporation that its certificate of incorporation is not in good standing and that it may be dissolved as provided in subsection 2.
    - (1) The secretary of state shall mail the notice of impending dissolution to the last registered agent at the last registered office of record.
    - (2) If the publicly traded corporation files its annual report after the notice is mailed, together with the publicly traded corporation franchise fee and a late filing penalty of one thousand dollars, then the secretary of state shall restore its certificate of incorporation to good standing.
2. A publicly traded corporation that fails to file its annual report or to pay the publicly traded corporation franchise fee due within one year after the date provided in subsection 1 of section 10-35-29 ceases to exist as a corporation and is considered involuntarily dissolved by operation of law.
  - a. The secretary of state shall note the dissolution of the certificate of incorporation of the publicly traded corporation on the records of the secretary of state and shall give notice of the action to the dissolved publicly traded corporation.
  - b. Notice by the secretary of state must be mailed to the last registered agent at the last registered office of record.

3. A publicly traded corporation dissolved for failure to file an annual report or to pay a publicly traded corporation franchise fee due may be reinstated within one year following the dissolution by:
  - a. Filing a past-due annual report with the publicly traded corporation franchise fee due;
  - b. Paying a late filing penalty of one thousand dollars; and
  - c. Paying a reinstatement fee of one hundred thirty-five dollars.
4. Reinstatement under this subsection does not affect the rights or liabilities arising during the time from the dissolution to the reinstatement.
5. Fees paid to the secretary of state according to this chapter are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-35-28 or the annual report lacks sufficient payment as required by section 10-35-28 or as required by this section.

**10-35-32. Secretary of state - Powers - Enforcement - Penalty - Appeal.**

1. The secretary of state has the power and authority reasonably necessary to efficiently administer this chapter and to perform the duties imposed thereby.
2. The secretary of state may propound to any publicly traded corporation that is subject to this chapter and to any officer, director, or employee thereof, any interrogatory reasonably necessary and proper to ascertain whether the publicly traded corporation has complied with all provisions of this chapter applicable to the publicly traded corporation.
  - a. The interrogatory must be answered within thirty days after mailing or within any additional time as may be fixed by the secretary of state. The answer to the interrogatory must be full and complete and must be made in writing and under oath.
  - b. If the interrogatory is directed:
    - (1) To an individual, it must be answered by that individual; or
    - (2) To a publicly traded corporation, it must be answered by the president, vice president, secretary, or assistant secretary of the publicly traded corporation.
  - c. The secretary of state is not required to file any record to which the interrogatory relates until the interrogatory has been answered, and not then if the answers disclose the record is not in conformity with this chapter.
  - d. The secretary of state shall certify to the attorney general, for action the attorney general may deem appropriate, any interrogatory and answers thereto, which discloses a violation of this chapter.

- e. Each officer, director, or employee of a publicly traded corporation who fails or refuses within the time provided by subdivision a to answer truthfully and fully an interrogatory propounded to that person by the secretary of state is guilty of an infraction.
        - f. An interrogatory propounded by the secretary of state and the answers are not open to public inspection. The secretary of state may not disclose any facts or information obtained from the interrogatory or answers except insofar as permitted by law or insofar as required for evidence in any criminal proceedings or other action by this state.
3. If the secretary of state rejects any record required by this chapter to be approved by the secretary of state before the record may be filed, then the secretary of state shall give written notice of the rejection to the person that delivered the record, specifying the reasons for rejection.
  - a. Within thirty days after the service of the notice of denial, the publicly traded corporation may appeal to the district court in the judicial district serving Burleigh County by filing with the clerk of court a petition setting forth a copy of the record sought to be filed and a copy of the written rejection of the record by the secretary of state.
  - b. The matter must be tried de novo by the court. The court shall either sustain the action of the secretary of state or direct the secretary of state to take the action the court determines proper.
4. If the secretary of state dissolves a publicly traded corporation pursuant to subsection 2 of section 10-35-31, then the publicly traded corporation may appeal to the district court in the judicial district serving Burleigh County by filing with the clerk of court a petition, including:
  - a. A copy of the publicly traded corporation's articles of incorporation; and
  - b. A copy of the notice of dissolution given by the secretary of state.
5. The district court shall try the matter de novo. The court shall sustain the action of the secretary of state or direct the secretary of state to take the action the court determines proper.
6. If the court order sought is one for reinstatement of a publicly traded corporation that has been dissolved as provided in subsection 2 of section 10-35-31, then together with any other actions the court deems proper, any such order which reverses the decision of the secretary of state shall require the publicly traded corporation to:
  - a. File all past-due annual reports;
  - b. Pay the publicly traded corporation franchise fees to the secretary of state for each annual report as provided in subsection 3 of section 10-35-28; and
  - c. Pay the reinstatement fee to the secretary of state as provided in subsection 3 of section 10-35-31.

7. 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 are treated as other civil actions.

**10-35-33. Funds received.** Ten percent of the fees received by the secretary of state for filing records of a publicly traded corporation as provided for in section 10-19.1-147 or this chapter must be deposited in the secretary of state's general services operating fund to pay the cost to administer this chapter.

**SECTION 2. AMENDMENT.** Section 54-09-08 of the North Dakota Century Code is amended and reenacted as follows:

**54-09-08. Secretary of state's general services operating fund.** The secretary of state's general services operating fund is a special fund in the state treasury. Moneys in the fund are to be used pursuant to legislative appropriations for the provision of services under section 16.1-02-15, subsection 6 of section 41-09-94, subsection 9 of section 54-09-04, and sections 10-35-33, 54-09-10, and 54-09-11. At the close of each biennium, the secretary of state shall transfer any unobligated balance remaining in the fund exceeding seventy-five thousand dollars to the general fund.

Approved April 10, 2007

Filed April 11, 2007

# COUNTIES

## CHAPTER 103

### HOUSE BILL NO. 1029

(Legislative Council)

(Finance and Taxation Committee)

## SALES TAX TRANSFER TO SCHOOL DISTRICTS

AN ACT to create and enact a new section to chapter 11-09.1 and a new section to chapter 40-05.1 of the North Dakota Century Code, relating to limits on transfers of home rule county and city sales tax revenue to school districts; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 11-09.1 of the North Dakota Century Code is created and enacted as follows:

**Sales tax revenue transfer to school districts prohibited.**

Notwithstanding the provisions of chapters 54-40 and 54-40.3 or any other provision of law, revenue from sales, use, or other excise taxes levied under this chapter may not be transferred to or for the primary benefit of a school district except for payment of bonded indebtedness incurred before the effective date of this Act or for capital construction and associated costs approved by the electors of the county before the effective date of this Act.

**SECTION 2.** A new section to chapter 40-05.1 of the North Dakota Century Code is created and enacted as follows:

**Sales tax revenue transfer to school districts prohibited.**

Notwithstanding the provisions of chapters 54-40 and 54-40.3 or any other provision of law, revenue from sales, use, or other excise taxes levied under this chapter may not be transferred to or for the primary benefit of a school district except for payment of bonded indebtedness incurred before the effective date of this Act or for capital construction and associated costs approved by the electors of the city before the effective date of this Act.

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

Approved April 18, 2007  
Filed April 19, 2007

**CHAPTER 104****HOUSE BILL NO. 1381**

(Representatives Grande, Brandenburg, Haas, Sukut)  
(Senator Dever)

**COUNTY OFFICER TERM COMMENCEMENT**

AN ACT to amend and reenact sections 11-10-05, 11-13-01, and 11-14-02 of the North Dakota Century Code, relating to term commencement for county officers.

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

**SECTION 1. AMENDMENT.** Section 11-10-05 of the North Dakota Century Code is amended and reenacted as follows:

**11-10-05. When terms of county officers commence - When officers qualify.** Except as otherwise specifically provided by the laws of this state, the regular term of office of each county officer, when the officer is elected for a full term, shall commence on the first ~~Monday~~ Monday in of January next succeeding the officer's election and each such officer shall qualify and enter upon the discharge of the officer's duties on ~~or before the first Monday in~~ or before the first Monday in of January next succeeding the date of the officer's election ~~or within ten days thereafter.~~ If the office to which an officer is elected was vacant at the time of the officer's election or becomes vacant prior to the date fixed for the commencement of the officer's term, the officer may qualify and enter upon the duties of the office forthwith even though the officer was not elected to fill such vacancy. If an officer is elected to fill an unexpired term in an office then held by an appointee, such officer 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 first Monday in January next succeeding the date of the officer's election to the unexpired term of office.

**SECTION 2. AMENDMENT.** Section 11-13-01 of the North Dakota Century Code is amended and reenacted as follows:

**11-13-01. When county auditor to qualify and take office.** The county auditor shall qualify and enter upon the discharge of the duties of office on ~~or before the first Monday~~ or before the first Monday of April next succeeding the auditor's election, ~~or within ten days thereafter.~~

**SECTION 3. AMENDMENT.** Section 11-14-02 of the North Dakota Century Code is amended and reenacted as follows:

**11-14-02. When county treasurer to qualify and take office.** The county treasurer shall qualify and enter upon the discharge of the duties of the office on ~~or before the first Monday~~ or before the first Monday of May next succeeding the treasurer's election, ~~or within ten days thereafter.~~

Approved March 23, 2007  
Filed March 23, 2007

**CHAPTER 105****SENATE BILL NO. 2149**  
(Senators Lindaas, Olafson, Wanzek)  
(Representatives Aarsvold, Monson, Vigesaa)**JOB DEVELOPMENT AUTHORITY EQUITY AND  
STUDY**

AN ACT to amend and reenact sections 11-11.1-03 and 40-57.4-03 of the North Dakota Century Code, relating to powers of job development authorities to take equity positions; and to provide for a legislative council study.

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

**SECTION 1. AMENDMENT.** Section 11-11.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**11-11.1-03. Powers and duties of job development authorities.** The job development authority or joint job development authority shall use its financial and other resources to encourage and assist in the development of employment and promotion of tourism within the county or counties. In fulfilling this objective, the 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 or counties.
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 property.
6. To certify a tax levy as provided in section 11-11.1-04 and to expend moneys raised by the tax for the purposes provided in this chapter. A job development authority may accept and expend moneys from any other source.
7. To insure or provide for insurance of any 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, including enabling agreements permitted under chapter 54-40.



10. To loan, grant, or convey any funds or other property held by the authority for any purpose necessary or convenient to carry into effect the objective of the authority established by this chapter.
11. To use existing uncommitted funds held by the authority to guarantee loans or make other financial commitments to enhance economic development.
12. To take equity positions in, provide loans to, or use other innovative financing mechanisms to provide capital for new or expanding businesses in this state or for businesses relocating to this state.
13. To exercise any other powers necessary to carry out the purposes and provisions of this chapter.

**SECTION 2. AMENDMENT.** Section 40-57.4-03 of the North Dakota Century Code is amended and reenacted as follows:

**40-57.4-03. Powers and duties of city job development authorities.** The city job development authority shall use its financial and other resources to encourage and assist in the development of employment within the city. 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 city.
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 40-57.4-04 and to expend moneys raised by the tax for the purposes provided in this chapter.
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 loan, grant, or convey any funds or other real or personal property held by the authority for any purpose necessary or convenient to carry into effect the objective of the authority established by this chapter.
11. To use existing, uncommitted funds held by the authority to guarantee loans or make other financial commitments to enhance economic development.

12. To take an equity position in, provide a loan to, or use any other innovative financing mechanism to provide capital for a new or expanding business in this state or for a business relocating to this state.
13. To exercise any other powers necessary to carry out the purposes and provisions of this chapter.

### **SECTION 3. LEGISLATIVE COUNCIL STUDY - JOB DEVELOPMENT**

**AUTHORITIES.** The legislative council shall study during the 2007-08 interim job development authorities across the state to determine the economic impact created by the authorities, to examine funding mechanisms used by the authorities when expending resources for economic development purposes, and to determine whether the authorities serve a viable purpose. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Approved March 12, 2007

Filed March 13, 2007

**CHAPTER 106****HOUSE BILL NO. 1157**

(Representative Porter)  
(Senator Lyson)

**SHERIFF UNIFORM ALLOWANCE**

AN ACT to amend and reenact sections 11-15-29 and 11-15-31 of the North Dakota Century Code, relating to uniforms for sheriffs and sheriffs' deputies.

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

**SECTION 1. AMENDMENT.** Section 11-15-29 of the North Dakota Century Code is amended and reenacted as follows:

**11-15-29. Uniform allowance for sheriffs and full-time deputy sheriffs sheriffs' deputies.** ~~Sheriffs and full-time deputy sheriffs shall be allowed by the~~ The board of county commissioners in each county an amount not to exceed five hundred dollars per person during that person's first year of service and three hundred fifty dollars per person each succeeding year shall provide funding of at least three hundred fifty dollars per individual per year for uniforms for the sheriff and each sheriff's deputy. The sheriff may expend the funds for uniforms as the sheriff deems necessary and is not limited to an annual amount that may be expended for each uniform or for each individual.

**SECTION 2. AMENDMENT.** Section 11-15-31 of the North Dakota Century Code is amended and reenacted as follows:

**11-15-31. Uniform surrendered when term of office ends upon termination of employment.** ~~The uniforms and parts thereof purchased by the board of county commissioners shall~~ must be returned to the sheriff's office upon termination of employment of each sheriff and ~~full-time~~ sheriff's deputy.

Approved April 11, 2007

Filed April 13, 2007

**CHAPTER 107****SENATE BILL NO. 2271**

(Senators Holmberg, Klein, Wardner)  
(Representatives Boehning, Carlson, Martinson)

**ZONING APPROVAL AND DISAPPROVAL  
STATEMENTS**

AN ACT to amend and reenact sections 11-33-01, 11-33.2-11, 40-47-04, 40-48-21, and 58-03-13 of the North Dakota Century Code, relating to requiring findings or statements upon which zoning requests and subdivision plat requests are disapproved.

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

**SECTION 1. AMENDMENT.** Section 11-33-01 of the North Dakota Century Code is amended and reenacted as follows:

**11-33-01. County power to regulate property.** For the purpose of promoting health, safety, morals, public convenience, general prosperity, and public welfare, the board of county commissioners of any county may regulate and restrict within the county, subject to section 11-33-20 and chapter 54-21.3, the location and the use of buildings and structures and the use, condition of use, or occupancy of lands for residence, recreation, and other purposes. The board of county commissioners and a county zoning commission shall state the grounds upon which any request for a zoning amendment or variance is approved or disapproved, and written findings upon which the decision is based must be included within the records of the board or commission. The board of county commissioners shall establish zoning requirements for solid waste disposal and incineration facilities before July 1, 1994. The board of county commissioners may impose tipping or other fees on solid waste management and incineration facilities. The board of county commissioners may not impose any fee under this section on an energy conversion facility or coal mining operation that disposes of its waste onsite. The board of county commissioners may establish institutional controls that address environmental concerns with the state department of health as provided in section 23-20.3-03.1.

**SECTION 2. AMENDMENT.** Section 11-33.2-11 of the North Dakota Century Code is amended and reenacted as follows:

**11-33.2-11. Board authorized to may approve plats - Appropriate money.** The board of county commissioners ~~is empowered to authorize and provide for the approval of~~ may approve plats as a prerequisite to the subdivision of land subject to the provisions of this chapter and may establish and collect reasonable fees therefor. The fees ~~so~~ collected ~~shall~~ must be credited to the general fund of the county. The board of county commissioners ~~is further empowered to~~ may appropriate, out of the general funds of the county, ~~such~~ moneys as ~~may~~ be necessary for the purposes of this chapter. The board of county commissioners shall state the grounds upon which any request for approval of plats is approved or disapproved, and written findings upon which the decision is based must be included within the records of the board.

**SECTION 3. AMENDMENT.** Section 40-47-04 of the North Dakota Century Code is amended and reenacted as follows:

**40-47-04. Determining and enforcing regulations - Public hearing and notice thereof - Publication of regulations, restrictions, and boundaries.**

1. The governing body of a city which ~~shall use~~ uses zoning regulations shall provide for the manner in which the regulations and restrictions ~~shall must~~ be established, enforced, or supplemented, and for the manner in which the boundaries of the districts ~~shall must~~ be established and from time to time changed. A copy of each proposed regulation, restriction, or boundary ~~shall must~~ be filed with the city auditor. No regulation, restriction, or boundary ~~shall may~~ become effective until after a public hearing ~~thereon~~ at which parties in interest and citizens shall have an opportunity to be heard. Notice of ~~said the~~ the hearing ~~shall must~~ be published once a week for two successive weeks ~~prior to before~~ the time set for ~~said the~~ the hearing in the official newspaper of the city. ~~Such The~~ The notice ~~shall must~~ contain the following items:
  - 4- a. The time and place of the hearing.
  - 2- b. A description of any property involved in any zoning change, by street address if streets have been platted or designated in the area affected.
  - 3- c. A description of the nature, scope, and purpose of the proposed regulation, restriction, or boundary.
  - 4- d. A statement of the times at which it will be available to the public for inspection and copying at the office of the city auditor.
2. Upon establishment of any regulation, restriction, or boundary hereunder, the governing body of a city shall file a certified copy thereof with the city auditor and shall cause notice of the same to be published in the official newspaper of the city. ~~Said The~~ The notice ~~shall must~~ describe the nature, scope, and purpose of the regulation, restriction, or boundary and ~~shall must~~ state the times at which it will be available to the public for inspection and copying at the office of the city auditor.
3. The governing body of a city, a city zoning commission, and a board of adjustment shall state the grounds upon which any request for a zoning amendment or variance is approved or disapproved, and written findings upon which the decision is based must be included within the records of the governing body, commission, or board.

**SECTION 4. AMENDMENT.** Section 40-48-21 of the North Dakota Century Code is amended and reenacted as follows:

**40-48-21. Approval of plats by commission - Hearings - Notice - Effect.**

Within thirty days after the submission of a plat, the planning commission shall approve or disapprove ~~it the~~ the plat. If the plat is not approved or disapproved within ~~such that~~ that time, ~~it shall be the plat is~~ the plat is deemed to have been approved, and a certificate to that effect ~~shall must~~ be issued by the commission on demand. The applicant, however, may waive the requirement that the commission ~~shall~~ act within thirty days and may consent to an extension of ~~such the~~ the period. ~~The ground~~ The commission shall state the grounds upon which any plat is approved or disapproved

~~shall be stated upon, and written findings upon which the decision is based must be included within the records of the commission. Any plat submitted to the commission shall must contain the name and address of a person an individual to whom notice of a hearing shall must be sent. No action shall may be taken by the commission upon any plat until # the commission has afforded a hearing thereon. At least five days before the date fixed for such the hearing, a notice of the time and place of such the hearing shall must be sent by registered or certified mail to the address shown on the plat. Public notice of all such hearings also shall must be given. Every plat approved by the commission may be adopted by the commission as an amendment of or addition to the master plan without further hearing.~~

**SECTION 5. AMENDMENT.** Section 58-03-13 of the North Dakota Century Code is amended and reenacted as follows:

**58-03-13. Township zoning commissions - Membership - Reports and recommendations - District boundaries - Hearings - Notice.** The board of township supervisors of a township desiring to avail itself of the powers conferred by sections 58-03-11 through 58-03-15 shall establish, by resolution, a township zoning commission to recommend the boundaries of the various township zoning districts and appropriate regulations and restrictions to be established therein. Membership of ~~such the~~ commission must consist of three township supervisors and two members appointed from the municipalities concerned in relation to which ~~such the~~ zoning is contemplated. Where the area to be regulated and restricted is situated in two or more townships, a joint zoning commission may be established. Membership of a joint zoning commission must consist of two township supervisors from each township and two members from the municipality in relation to which ~~such the~~ zoning is contemplated. ~~Each such~~ A zoning commission shall make a preliminary report and hold public hearings ~~thereon~~ before submitting its final report and recommendations to the board or boards of township supervisors. The board or boards of township supervisors may ~~thereupon~~ establish, and from time to time change, the boundaries of township zoning districts and establish, amend, supplement, and enforce regulations and restrictions in ~~such the~~ districts. No regulation, restriction, or boundaries become effective until after a public hearing ~~thereon~~ at which parties in interest and citizens have an opportunity to be heard. At least fifteen days' notice of the time and place of ~~such the~~ hearing must be published in the official newspaper of the county and also in the official newspaper of the municipality in relation to which ~~such the~~ zoning action is taken, if in ~~such the~~ municipality an official newspaper other than the official newspaper of the county is published. The description of any land within any zoning district established by a zoning commission together with any regulations and restrictions established ~~therein~~ must be filed with the governing bodies of the township and municipalities concerned, and ~~in the event~~ if amendments are made to the boundaries of the zoning district or the regulations or restrictions ~~established therein, such the~~ amendments must be filed in the same manner. A zoning commission established under this section and a board of township supervisors shall state the grounds upon which any request for a zoning amendment or variance is approved or disapproved, and written findings upon which the decision is based must be included within the records of the commission or board.

Approved March 12, 2007  
Filed March 13, 2007

**CHAPTER 108****HOUSE BILL NO. 1420**

(Representatives Brandenburg, Aarsvold, Froelich)  
(Senator Erbele)

**COUNTY AND TOWNSHIP FEEDLOT ZONING**

AN ACT to create and enact section 11-33-02.1, a new section to chapter 11-33, section 58-03-11.1, and a new section to chapter 58-03 of the North Dakota Century Code, relating to regulations by a board of county commissioners and by a board of township supervisors; and to amend and reenact section 11-33-02, subdivision c of subsection 2 of section 23-25-11, and section 58-03-11 of the North Dakota Century Code, relating to the designation of districts by a board of county commissioners and to the establishment of districts by a board of township supervisors.

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

**SECTION 1. AMENDMENT.** Section 11-33-02 of the North Dakota Century Code is amended and reenacted as follows:

**11-33-02. Board of county commissioners to designate districts - Uniformity.**

4. For any or all of the purposes designated in section 11-33-01, the board of county commissioners may divide by resolution all or any parts of the county, subject to ~~section~~ sections 11-33-02.1 and 11-33-20, into districts of such number, shape, and area as may be determined necessary, and likewise may enact suitable regulations to carry out the purposes of this chapter. These regulations must be uniform in each district, but the regulations in one district may differ from those in other districts. ~~A regulation or restriction may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming or ranching. For purposes of this section, "farming or ranching" means cultivating land for production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include producing timber or forest products, nor does the term include a contract whereby a processor or distributor of farm products or supplies provides grain, harvesting, or other farm services.~~
2. ~~A board of county commissioners may regulate the nature and scope of concentrated feeding operations permissible in the county; however, if a regulation would impose a substantial economic burden on a concentrated feeding operation in existence before the effective date of the regulation, the board of county commissioners shall declare that the regulation is ineffective with respect to any concentrated feeding operation in existence before the effective date of the regulation.~~
3. ~~A regulation may not preclude the development of a concentrated feeding operation in the county. A regulation addressing the development of a concentrated feeding operation in the county may set~~

reasonable standards, based on the size of the operation, to govern its location.

4. For purposes of this section, "concentrated feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle. For purposes of this section, "livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.
5. A board of county commissioners may not prohibit, through regulation, the reasonable diversification or expansion of a farming or ranching operation.
6. This chapter does not include any power relating to the establishment, repair, and maintenance of highways or roads.

**SECTION 2.** Section 11-33-02.1 of the North Dakota Century Code is created and enacted as follows:

**11-33-02.1. Farming and ranching regulations - Requirements - Limitations - Definitions.**

1. For purposes of this section:
  - a. "Concentrated feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate. The term does not include normal wintering operations for cattle.
  - b. "Farming or ranching" means cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include:
    - (1) The production of timber or forest products; or
    - (2) The provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.
  - c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, and any other animals that are raised, fed, or produced as a part of farming or ranching activities.
  - d. "Location" means the setback distance between a structure, fence, or other boundary enclosing a concentrated feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or nonranch purposes, or the nearest land zoned for residential, recreational, or commercial purposes. The term does not include the setback distance for the application of manure or for the



application of other recycled agricultural material under a nutrient management plan approved by the department of health.

2. For purposes of this section, animal units are determined as follows:
  - a. One mature dairy cow, whether milking or dry, equals 1.33 animal units;
  - b. One dairy cow, heifer, or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;
  - c. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;
  - d. One cow-calf pair equals 1.0 animal unit;
  - e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;
  - f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
  - g. One horse equals 2.0 animal units;
  - h. One sheep or lamb equals 0.1 animal unit;
  - i. One turkey equals 0.0182 animal unit;
  - j. One chicken, other than a laying hen, equals 0.008 animal unit;
  - k. One laying hen equals 0.012 animal unit;
  - l. One duck equals 0.033 animal unit; and
  - m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight.
3. A board of county commissioners may not prohibit or prevent the use of land or buildings for farming or ranching and may not prohibit or prevent any of the normal incidents of farming or ranching.
4. A board of county commissioners may not preclude the development of a concentrated feeding operation in the county.
5. A board of county commissioners may not prohibit the reasonable diversification or expansion of a farming or ranching operation.
6. A board of county commissioners may adopt regulations that establish different standards for the location of concentrated feeding operations based on the size of the operation and the species and type being fed.
7. If a regulation would impose a substantial economic burden on a concentrated feeding operation in existence before the effective date of the regulation, the board of county commissioners shall declare that the

regulation is ineffective with respect to any concentrated feeding operation in existence before the effective date of the regulation.

8. a. A board of county commissioners may establish high-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are less than those in other districts.
- b. A board of county commissioners may establish, around areas zoned for residential, recreational, or nonagricultural commercial uses, low-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are greater than those in other districts; provided, the low-density agricultural production districts may not extend more than one and one-half miles [2.40 kilometers] from the edge of the area zoned for residential, recreational, or nonagricultural commercial uses.
- c. The setbacks provided for in this subsection may not vary by more than fifty percent from those established in subdivision a of subsection 7 of section 23-25-11.
- d. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by a concentrated feeding operation.

**SECTION 3.** A new section to chapter 11-33 of the North Dakota Century Code is created and enacted as follows:

**Highways - Roads.** This chapter does not include any power relating to the role of the board of county commissioners in the establishment, repair, or maintenance of highways or roads.

**SECTION 4. AMENDMENT.** Subdivision c of subsection 2 of section 23-25-11 of the North Dakota Century Code is amended and reenacted as follows:

- c. If a county or township has zoned or established a setback distance for an animal feeding operation which is greater than one-half mile [.80 kilometer] under either section ~~44-33-02~~ or ~~58-03-11~~ 11-33-02.1 or 58-03-11.1, or if the setback distance under subsection 7 is greater than one-half mile [.80 kilometer], measurements for compliance with the seven odor concentration units standard must be taken at the setback distance rather than one-half mile [.80 kilometer] from the facility under subdivision b, except for any residence, church, school, business, public building, park, or campground within the setback distance which was built or established before the animal feeding operation was established, unless the animal feeding operation has obtained an odor easement from the preexisting facility.

**SECTION 5. AMENDMENT.** Section 58-03-11 of the North Dakota Century Code is amended and reenacted as follows:

**58-03-11. Establishment of zoning districts - Limitation - Scope of zoning regulations and restrictions Uniformity.**

4. For the purpose of promoting the health, safety, morals, or the general welfare, or to secure the orderly development of approaches to municipalities, the board of township supervisors may establish one or more zoning districts and within such districts may, subject to the provisions of chapter 54-21.3 and section 58-03-11.1, regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, the height, number of stories, and size of buildings and structures, the percentage of lot that may be occupied, the size of courts, yards, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. All such regulations and restrictions must be uniform throughout each district, but the regulations and restrictions in one district may differ from those in other districts. The board of township supervisors may establish institutional controls that address environmental concerns with the state department of health as provided in section 23-20.3-03.1.
2. A regulation or restriction may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming or ranching. For purposes of this section, "farming or ranching" means cultivating land for production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include producing timber or forest products, nor does the term include a contract whereby a processor or distributor of farm products or supplies provides grain, harvesting, or other farm services.
3. A board of township supervisors may regulate the nature and scope of concentrated feeding operations permissible in the township; however, if a regulation would impose a substantial economic burden on a concentrated feeding operation in existence before the effective date of the regulation, the board of township supervisors shall declare that the regulation is ineffective with respect to any concentrated feeding operation in existence before the effective date of the regulation.
4. A regulation may not preclude the development of a concentrated feeding operation in the township. A regulation addressing the development of a concentrated feeding operation in the township may set reasonable standards, based on the size of the operation, to govern its location.
5. For purposes of this section, "concentrated feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle. For purposes of this section, "livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.

6. ~~A board of township supervisors may not prohibit, through regulation, the reasonable diversification or expansion of a farming or ranching operation.~~
7. ~~Sections 58-03-11 through 58-03-15 do not include any power relating to the establishment, repair, and maintenance of highways or roads.~~

**SECTION 6.** Section 58-03-11.1 of the North Dakota Century Code is created and enacted as follows:

**58-03-11.1. Farming and ranching regulations - Requirements - Limitations - Definitions.**

1. For purposes of this section:

- a. "Concentrated feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate. The term does not include normal wintering operations for cattle.
- b. "Farming or ranching" means cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include:
  - (1) The production of timber or forest products; or
  - (2) The provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.
- c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, and any other animals that are raised, fed, or produced as a part of farming or ranching activities.
- d. "Location" means the setback distance between a structure, fence, or other boundary enclosing a concentrated feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or nonranch purposes, or the nearest land zoned for residential, recreational, or commercial purposes. The term does not include the setback distance for the application of manure or for the application of other recycled agricultural material under a nutrient management plan approved by the department of health.

2. For purposes of this section, animal units are determined as follows:

- a. One mature dairy cow, whether milking or dry, equals 1.33 animal units;
- b. One dairy cow, heifer, or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;
- c. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;

- d. One cow-calf pair equals 1.0 animal unit;
  - e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;
  - f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
  - g. One horse equals 2.0 animal units;
  - h. One sheep or lamb equals 0.1 animal unit;
  - i. One turkey equals 0.0182 animal unit;
  - j. One chicken, other than a laying hen, equals 0.008 animal unit;
  - k. One laying hen equals 0.012 animal unit;
  - l. One duck equals 0.033 animal unit; and
  - m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight.
3. A board of township supervisors may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming or ranching.
4. A regulation may not preclude the development of a concentrated feeding operation in the township.
5. A board of township supervisors may not prohibit the reasonable diversification or expansion of a farming or ranching operation.
6. A board of township supervisors may adopt regulations that establish different standards for the location of concentrated feeding operations based on the size of the operation and the species and type being fed.
7. If a regulation would impose a substantial economic burden on a concentrated feeding operation in existence before the effective date of the regulation, the board of township supervisors shall declare that the regulation is ineffective with respect to any concentrated feeding operation in existence before the effective date of the regulation.
8. a. A board of township supervisors may establish high-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are less than those in other districts.
- b. A board of township supervisors may establish, around areas zoned for residential, recreational, or nonagricultural commercial uses, low-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are greater than those in other districts; provided, the low-density agricultural production districts may not extend more than one-half mile [0.80 kilometer] from the edge of

the area zoned for residential, recreational, or nonagricultural commercial uses.

- c. The setbacks provided for in this subsection may not vary by more than fifty percent from those established in subdivision a of subsection 7 of section 23-25-11.
- d. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by a concentrated feeding operation.

**SECTION 7.** A new section to chapter 58-03 of the North Dakota Century Code is created and enacted as follows:

**Highways - Roads.** Sections 58-03-11 through 58-03-15 do not include any power relating to the role of the board of township supervisors in the establishment, repair, or maintenance of highways or roads.

Approved April 17, 2007  
Filed April 18, 2007

**CHAPTER 109****SENATE BILL NO. 2278**

(Senators Wanzek, Heitkamp, Klein)  
(Representatives Belter, Boe, D. Johnson)

**CONCENTRATED ANIMAL FEEDING OPERATION  
ZONING**

AN ACT to create and enact a new section to chapter 11-33, a new section to chapter 23-01, and a new section to chapter 58-03 of the North Dakota Century Code, relating to county and township zoning regulation of concentrated animal feeding operations and a repository for zoning regulations.

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

**SECTION 1.** A new section to chapter 11-33 of the North Dakota Century Code is created and enacted as follows:

**Regulation of concentrated animal feeding operations - Central repository.**

1. Any zoning regulation that pertains to a concentrated animal feeding operation and which is promulgated by a county after July 31, 2007, is not effective until filed with the state department of health for inclusion in the central repository established under section 2 of the Act. Any zoning regulation that pertains to concentrated animal feeding operations and which was promulgated by a county before August 1, 2007, may not be enforced until the regulation is filed with the state department of health for inclusion in the central repository.
2. For purposes of this section:
  - a. "Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.
  - b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.

**SECTION 2.** A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

**Zoning regulation of concentrated animal feeding operations - Central repository.** The state department of health shall establish, operate, and maintain an electronically accessible central repository for all county and township zoning regulations that pertain to concentrated animal feeding operations. The county auditor of a county and the township clerk of a township having a zoning regulation

that pertains to concentrated animal feeding operations shall file the regulation with the department of health for inclusion in the central repository.

**SECTION 3.** A new section to chapter 58-03 of the North Dakota Century Code is created and enacted as follows:

**Regulation of concentrated animal feeding operations - Central repository.**

1. Any zoning regulation that pertains to a concentrated animal feeding operation and which is promulgated by a township after July 31, 2007, is not effective until filed with the state department of health for inclusion in the central repository established under section 2 of this Act. Any zoning regulation that pertains to a concentrated animal feeding operation and which was promulgated by a county or a township before August 1, 2007, may not be enforced until the regulation is filed with the state department of health for inclusion in the central repository.
2. For purposes of this section:
  - a. "Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.
  - b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.

Approved April 26, 2007

Filed April 27, 2007



# CORRECTIONS, PAROLE, AND PROBATION

## CHAPTER 110

### HOUSE BILL NO. 1116

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

## CORRECTIONAL FACILITIES AND INMATE OFFENSES

AN ACT to amend and reenact sections 12-44.1-02, 12-44.1-06, 12-44.1-13, 12-44.1-21, and 12-44.1-25 of the North Dakota Century Code, relating to correctional facilities; to repeal section 12-44.1-27 of the North Dakota Century Code, relating to corrective action and enforcement for correctional facilities; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 12-44.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**12-44.1-02. Establishing correctional facilities - Correctional facility 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 correctional facility at county or city expense.
2. Contracting for correctional facility services and use of correctional facilities with another county or city maintaining a correctional facility or with the state or federal government.
3. Establishing and maintaining, pursuant to chapter 54-40 or 54-40.3 and this chapter, a correctional facility in conjunction with other counties and cities.
4. A county or city may contract with a county or city of another state for ~~the~~
  - a. ~~The~~ confinement of lawfully committed county or city inmates from ~~that the other~~ state in a ~~North Dakota~~ correctional facility; or for the
  - b. ~~The~~ confinement of lawfully committed North Dakota inmates in a county ~~or~~, city, or regional correctional facility of ~~such other~~ another state.

5. A city or county may contract with another correctional facility in this state for correctional services for purposes of safety, security, health and medical reasons, or for correctional facility administration.
6. A city or county may contract for the confinement of inmates lawfully sentenced by a tribal court.
7. A city or county may contract for correctional facility services with a privately operated correctional facility. Contracts with private agencies providing correctional facility services may be entered into for up to seven years.

**SECTION 2. AMENDMENT.** Section 12-44.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**12-44.1-06. Grades of correctional facilities.**

1. The department of corrections and rehabilitation shall, following inspection pursuant to section 12-44.1-24, grade correctional facilities as to length of allowable inmate confinement based upon construction, size, and usage, as follows:
  - a. "Grade one" means a correctional facility for confining inmates not more than one year.
  - b. "Grade two" means a correctional facility for confining inmates not more than ninety days.
  - c. "Grade three" means a correctional facility for confining inmates not more than ninety-six hours.
2. The length of confinement of a prisoner may be temporarily increased on a case-by-case basis in grade one and grade two correctional facilities upon the request of the administrator and the approval of the department of corrections and rehabilitation.
3. The department of corrections and rehabilitation, upon the request of the governing body of the correctional facility, may authorize a correctional facility to regularly confine inmates for more than one year if the correctional facility meets criteria established by the department, including:
  - a. A classification system approved by the department.
  - b. Education programs, including vocational education and a general equivalency diploma program.
  - c. Treatment programs, including licensed alcohol or drug addiction counseling.
  - d. Inmate work programs, including prison industries work programs.
  - e. An infirmary and onsite medical and pharmacy services.
  - f. Indoor and outdoor recreation.

**SECTION 3. AMENDMENT.** Section 12-44.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**12-44.1-13. Supervision of inmates.**

1. Inmates shall be supervised on a twenty-four-hour basis by trained correctional facility staff.
2. Correctional facility staff shall be located in ~~such~~ proximity to inmate living areas to permit the staff to hear and respond promptly to calls for help.
3. Each correctional facility shall provide for the personal observation of inmates on an irregular but frequent schedule.
4. Each correctional facility shall maintain sufficient law enforcement officers with correctional training or trained correctional facility staff to perform all functions relating to the intake and booking, security, control, custody, and supervision of inmates.
5. A correctional facility female staff member shall be available at all times ~~during which~~ when a female inmate is confined in the correctional facility.
6. Inmates shall be prohibited from supervising, controlling, or exerting any authority over other inmates.
7. The correctional facility shall maintain a daily written record of information concerning inmates.

**SECTION 4. AMENDMENT.** Section 12-44.1-21 of the North Dakota Century Code is amended and reenacted as follows:

**12-44.1-21. Prohibited acts.**

1. It is unlawful ~~to deliver or administer any alcoholic beverage or~~ for a person to willfully:
  - a. Manufacture, or possess with intent to manufacture, a controlled substance to a person detained in a correctional facility except for the delivery or administration of controlled substances or alcoholic beverages in accordance with the orders or prescription of a licensed physician and the approval, except in emergency circumstances, of the correctional facility administrator.
  - b. Deliver, or possess with intent to deliver, a controlled substance in a correctional facility. This subsection does not apply to the possession or delivery of controlled substances in accordance with the orders or prescription of a licensed physician and the approval, except in emergency circumstances, of the correctional facility administrator.
  - c. A person who violates this subsection is guilty of a class A felony.
2. ~~A person~~ It is unlawful for an inmate detained in a correctional facility ~~may not~~ to possess any controlled substance ~~or alcoholic beverage~~

unless the substance or beverage is prescribed except in accordance with the prescription or orders of a licensed physician, and the approval, except in emergency circumstances, of the correctional facility administrator. It is unlawful for an inmate in a correctional facility to possess alcohol or alcoholic beverages. If a correctional facility has adopted a rule banning the possession of tobacco in a correctional facility, it is unlawful for an inmate in a correctional facility to possess any tobacco except when the correctional facility administrator has authorized possession of tobacco for religious purposes or when on an authorized release from the correctional facility. An inmate who violates this subsection with respect to:

- a. Possession of a controlled substance is guilty of a class B felony.
  - b. Possession of alcohol or alcoholic beverages is guilty of a class A misdemeanor.
  - c. Possession of tobacco is guilty of a class B misdemeanor.
3. A person, other than an official or employee of the correctional facility, who violates subsection 4 by delivering or administering a controlled substance is guilty of a class B felony. An official or employee of the correctional facility who violates subsection 4 by delivering or administering a controlled substance is guilty of a class A felony. A person who violates subsection 4 by delivering alcoholic beverages is guilty of a class A misdemeanor. It is unlawful for a person to willfully deliver alcohol or alcoholic beverages to an inmate in a correctional facility. It is unlawful for a person to willfully deliver tobacco to an inmate in a correctional facility that has adopted a rule banning the possession of tobacco except when the correctional facility administrator has authorized possession of tobacco for religious purposes or when the inmate is on an authorized release from the correctional facility. A person who violates this subsection by:
- a. Delivery of alcohol or alcoholic beverages to an inmate in a correctional facility is guilty of a class A misdemeanor.
  - b. Delivery of tobacco to an inmate in a correctional facility is guilty of a class B misdemeanor.
4. It is unlawful for a person who is not an inmate to willfully possess a controlled substance in a correctional facility except in accordance with the orders or prescription of a licensed physician. A person who violates this subsection 2 by possessing a controlled substance is guilty of a class B felony. A person who violates subsection 2 by possessing alcoholic beverages is guilty of a class A misdemeanor.
5. It is unlawful for an inmate in a correctional facility to willfully procure, make, or possess an object, including a shard made of any material or a weapon, firearm, ammunition, or explosive material, intended to be used for an assault on another person or to damage property. An inmate in a correctional facility who violates this subsection with respect to:
- a. A shard or weapon that is not a dangerous weapon or firearm as defined in section 62.1-01-01 is guilty of a class B felony.

- b. Ammunition, a knife of any length, a weapon that is a dangerous weapon or firearm as defined in section 62.1-01-01, or explosive material is guilty of a class A felony.
6. It is unlawful for a person to deliver or provide to an inmate in a correctional facility an object intended to be used for an assault on another person or to damage property. A person who violates this subsection with respect to:
- a. A shard or weapon that is not a dangerous weapon or firearm as defined in section 62.1-01-01 is guilty of a class B felony.
  - b. Ammunition, a knife of any length, a weapon that is a dangerous weapon or firearm as defined in section 62.1-01-01, or is an explosive or destructive device is guilty of a class A felony.
7. As used in this section, "controlled substance" is as defined in subsection 6 of section 19-03.1-01 and includes counterfeit substances as defined in subsection 7 of section 19-03.1-01. As used in this section, "willfully" is as defined in section 12.1-02-02. As used in this section, "alcohol" and "alcoholic beverage" are as defined in section 5-01-01. As used in this section, "tobacco" means any form of tobacco, including cigarettes, cigars, snuff, or tobacco in any form in which it may be used for smoking or chewing.

**SECTION 5. AMENDMENT.** Section 12-44.1-25 of the North Dakota Century Code is amended and reenacted as follows:

**12-44.1-25. Inspection report - Notice of noncompliance - Hearing.**

1. A written report of each inspection pursuant to section 12-44.1-24 shall be made by the ~~The~~ correctional facility inspector shall submit a written inspection report to the administrator of the correctional facility and the director of the department of corrections and rehabilitation within thirty days following each inspection.
2. Copies of the report must be sent by the correctional facility inspector to the administrator responsible for the correctional facility and must also be submitted to the department of corrections and rehabilitation for review.
3. The inspection report must specify those respects in which when a correctional facility does or does not comply complies with the, or is in violation of, required minimum standards and, applicable state or federal law, or the department of corrections and rehabilitation rules for correctional facilities. The inspection report of noncompliance must If a correctional facility is in violation of any required minimum standards, applicable state or federal law, or department of corrections and rehabilitation rules for correctional facilities, the director of the department of corrections and rehabilitation may issue an order of noncompliance. The director shall identify the violation and required corrective measures in the order of noncompliance and specify the time limits within which such standards or rules are to be met, with consideration being given to the correctional facility shall correct the violations. The director shall consider the magnitude or seriousness of the deficiencies violations and their potential effects on the health and

safety of inmates, staff, law enforcement, and the public, the cost of correction, and other information deemed relevant by the department of corrections and rehabilitation director considers relevant in establishing the time period for the correctional facility to correct the violations. If the director determines that the violations are limited and minor, the director may issue a letter of noncompliance to the correctional facility and identify the violations and required corrective measures and the correctional facility shall immediately correct the violations.

3. The director of the department of corrections and rehabilitation may assess the department's actual costs for inspection and monitoring the correctional facility upon issue of an order of noncompliance to the correctional facility.
4. Where the nature and extent of deficiencies are such that an immediate order of full or partial closure is deemed necessary by the department of corrections and rehabilitation to preserve If a correctional facility fails to complete required corrective action within the time specified in the order of noncompliance, the director of the department of corrections and rehabilitation may issue an order for full, partial, or temporary closure of the correctional facility. If the director determines that the extent of the noncompliance presents a danger to the health and safety of inmates, staff, law enforcement, visitors, or the public, the period of time for correction may be dispensed with and director may issue an order of immediate full or, partial, or temporary closure may be issued by the department of corrections and rehabilitation without a prior order of noncompliance.
5. Within thirty days after receipt of a notice or order of immediate full, partial, or temporary closure, the administrator of a correctional facility may request a review of the determination by the department of corrections and rehabilitation pursuant to chapter 28-32. The review must be heard not more than forty-five days following the request, unless the period is extended by the at the request of the correctional facility. The department of corrections and rehabilitation may direct the correctional facility to pay to the department the reasonable and actual costs incurred by the department for any investigation and proceedings under this section.

**SECTION 6. REPEAL.** Section 12-44.1-27 of the North Dakota Century Code is repealed.

Approved March 12, 2007  
Filed March 13, 2007

**CHAPTER 111****SENATE BILL NO. 2357**

(Senators Nelson, Lyson)  
(Representatives Gruchalla, Koppelman)

**INMATE HOUSING**

AN ACT to amend and reenact section 12-44.1-09 of the North Dakota Century Code, relating to the housing of inmates.

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

**SECTION 1. AMENDMENT.** Section 12-44.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**12-44.1-09. Housing of inmates.** Each correctional facility shall adopt a classification system for inmates to provide for the security, safety, and order of the correctional facility and for the safety and security of the community. If the correctional facility has adopted a classification system approved by the department of corrections and rehabilitation, the correctional facility is not required to comply with subsections 3, 4, and 5 of this section. In grade one and grade two correctional facilities and, where practicable, in grade three correctional facilities, the following groups of inmates must be housed separately from each other:

1. Female inmates from male inmates.
2. Juveniles from adults, except that an adult held under a delinquency proceeding may be held with juveniles and a juvenile transferred or waived to adult court on a felony criminal offense may be housed with adults in a jail or regional correctional facility.
3. Persons detained for hearing or trial from inmates under sentence of imprisonment, unless authorized to be housed together by the administrator for security, order, or rehabilitation.
4. Persons detained for hearing or trial or under sentence of imprisonment from persons otherwise detained by order of the court, unless authorized to be housed together by the administrator for security, order, or rehabilitation.
5. Inmates who may have special needs as determined by the correctional facility or whose behavior may present a serious threat to the safety or security of the correctional facility, the staff, the inmate, or other inmates.

Approved May 2, 2007  
Filed May 3, 2007

**CHAPTER 112****SENATE BILL NO. 2025**

(Legislative Council)

(Budget Committee on Government Services)

**MEDICATION ADMINISTRATION AT CORRECTIONAL FACILITIES**

AN ACT to create and enact a new section to chapter 12-44.1 of the North Dakota Century Code, relating to provision of medication at a correctional facility; to amend and reenact section 43-12.1-04 of the North Dakota Century Code, relating to exemptions from the Nurse Practices Act; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 12-44.1 of the North Dakota Century Code is created and enacted as follows:

**Provision of medication - Training requirements - Verification - Rules.**

1. A correctional facility may authorize an employee to provide medication to an inmate of a correctional facility if the employee is:
  - a. Licensed or registered under title 43 and is providing the medication within the scope of practice of the profession for which the individual is licensed or registered; or
  - b. A correctional facility staff member who has successfully completed medication administration training that has been preapproved by the North Dakota board of nursing.
2. If a correctional facility uses a correctional facility staff member to provide medication to an inmate under subdivision b of subsection 1:
  - a. The correctional facility staff member may not provide the medication by the parenteral route; and
  - b. The correctional facility shall provide to the board of nursing verification of appropriate medication administration training for that correctional facility staff member.

<sup>60</sup> **SECTION 2. AMENDMENT.** Section 43-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>60</sup> Section 43-12.1-04 was also amended by section 12 of Senate Bill No. 2130, chapter 256.



**43-12.1-04. Persons exempt from provisions of chapter.** This chapter does not apply to a person that is not licensed or registered under this chapter and is:

1. ~~Persons who perform~~ A person that performs nursing interventions in cases of emergency or disaster.
2. ~~Students~~ A student practicing nursing as a part of an in-state nursing education program.
3. ~~Legally~~ A licensed nurse nurse of another state who is in good standing and who is employed in this state by the United States government or any of its bureaus, divisions, or agencies.
4. A nurse licensed by another state or Canada, whose employment requires the nurse to accompany and care for a patient in transit for health care.
5. A nurse licensed by another state whose employment by a resident of that state requires the nurse to accompany and care for the resident in North Dakota.
6. ~~A person~~ An individual who performs nursing tasks for a family member.
7. A person ~~who is not licensed under this chapter and who that~~ renders assistance pursuant to chapter 23-27.
8. A person licensed or registered under another chapter of this title and carrying out the therapy or practice for which the person is licensed or registered.
9. A person ~~who that~~ provides medications, other than by the parenteral route:
  - a. Within a correctional facility, in compliance with section 1 of this Act;
  - b. Within a residential treatment centers center for children licensed under chapter 25-03.2 and North Dakota Administrative Code chapter 75-03-17;
  - ~~b-~~ c. Within a treatment or care centers center for developmentally disabled persons licensed under chapter 25-16;
  - e- d. Within a group homes home, a residential child care facilities facility, and or an adult foster care facilities facility licensed under section 50-11-01 or North Dakota Administrative Code chapter 75-03-16; or
  - ~~d-~~ e. Within a human service centers center licensed under chapter 50-06.
10. A nurse currently licensed to practice nursing by another jurisdiction:
  - a. Whose practice in another state requires that nurse to attend orientation, meetings, or continuing education in North Dakota;

- b. Who serves as a guest lecturer or short-term consultant; or
  - c. Who provides evaluation undertaken on behalf of an accrediting organization.
11. An individual, including a feeding assistant, performing nonhands-on tasks while employed in a medicare-funded organization.
  12. Upon written notification to the board by an out-of-state nursing program, a student practicing nursing as a part of a nursing education program preparing for initial or advanced licensure as a registered nurse or licensed practical nurse which is approved by a board of nursing and is located in an institution of higher education that offers transferable credit.

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

Approved May 1, 2007  
Filed May 2, 2007

**CHAPTER 113****HOUSE BILL NO. 1482**

(Representatives Koppelman, Kreidt, Svedjan, Thoreson)  
(Senators Dever, Warner)

**CHRONICALLY ILL OFFENDER HEALTH CARE**

AN ACT to create and enact a new section to chapter 12-47 of the North Dakota Century Code, relating to health care for chronically or terminally ill offenders.

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

**SECTION 1.** A new section to chapter 12-47 of the North Dakota Century Code is created and enacted as follows:

**Definitions - Health care for chronically or terminally ill offenders - Notice to health care facility.**

1. As used in this section:
  - a. "Chronically ill" has the same meaning as in section 26.1-33.2-01.
  - b. "Department" means the department of corrections and rehabilitation.
  - c. "Health care facility" means an assisted living facility as defined in section 23-09-01, a basic care facility as defined in section 23-09.3-01, or a nursing home as defined in section 23-30-01, except that transitional care units and other long-term care beds owned or operated on the premises of acute care hospitals or critical care hospitals are not health care facilities for the purpose of this section.
  - d. "Terminally ill" has the same meaning as in section 26.1-33.2-01.
2. If an offender is to be given an early release, pardon, or parole due to a chronic or terminal illness for admission as a resident of a health care facility due to the chronic or terminal illness, the department shall provide prior written notice to the administrator of the facility, stating:
  - a. The offense for which the offender was convicted and a description of the actual offense;
  - b. The offender's status with the department;
  - c. That, subject to subsection 3, the information provided by the department regarding the offender may be provided to residents and employees of the facility by the administrator of the facility;
  - d. The offender's health status and type of health care the offender requires;

- e. Any available risk assessment information regarding the offender's likelihood of reoffending; and
- f. The name of the party responsible for the payment for the services provided by the health care facility to the offender.

Approved April 10, 2007  
Filed April 11, 2007

## CHAPTER 114

### HOUSE BILL NO. 1077

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

### INMATE FUNDS AND RESTITUTION

AN ACT to amend and reenact sections 12-48-15 and 12-48-22 of the North Dakota Century Code, relating to inmate funds and accounts and fines and restitution for the misconduct of offenders.

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

**SECTION 1. AMENDMENT.** Section 12-48-15 of the North Dakota Century Code is amended and reenacted as follows:

**12-48-15. Disposition of moneys earned inmate funds - Warden to keep account of money earned by inmates - Investment in interest-bearing accounts inmate funds.**

1. The warden of the penitentiary shall keep an account for each inmate. Not more than fifty percent of an inmate's penitentiary earnings, as provided by penitentiary rules, must be withheld from an inmate and deposited in a separate account for the inmate and may not be made available to the inmate until the inmate's release from the penitentiary, except as authorized by the warden. The remainder of an inmate's earnings must be made available to the inmate on a regular basis.
2. Inmates may, in writing, authorize the warden or designee to deposit any of 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 must 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. The warden may directly deposit an inmate's funds from sources outside of the penitentiary in any bank or account the inmate may designate. If a court order does not allow an inmate to designate a bank or account other than a Bank of North Dakota account or if it is necessary for the benefit and protection of the inmate, the warden, upon written explanation to the inmate, shall deposit an inmate's funds from sources outside the penitentiary into a Bank of North Dakota account. The department of corrections and rehabilitation and its divisions, departments, officers, and employees may not be held responsible or liable for any inmate income or funds deposited into a bank or account designated by an inmate.
4. The warden is responsible for guiding inmates in making proper use of their funds to pay their obligations, including the payment of any ~~administration~~ administratively ordered fee, fine or restitution, court-appointed counsel fees, court-ordered restitution, support for dependent relatives, or to provide for their own medical, surgical, eye

care, or dental treatment, or to pay for other services not generally provided by the state. The warden may withdraw funds from an inmate's penitentiary account or Bank of North Dakota two-signature account, without the inmate's signature, to meet the inmate's legitimate financial obligations. Before the funds may be withdrawn, the inmate must first receive written notice and be provided a penitentiary administrative hearing with the right to ~~penitentiary staff assistance and the right to appeal according to the director of the department of corrections and rehabilitation rules.~~ An inmate is not entitled to prior written notice, administrative hearing, or right to an appeal to the department of corrections and rehabilitation when funds are to be withdrawn for payment of a court-ordered obligation, including child support, provided the inmate has had notice and an opportunity to be heard in the court proceedings.

5. The warden may pay an inmate all funds in the inmate's spending account, less the inmate's outstanding obligations to the penitentiary, when the inmate is transferred to a county jail or regional correctional center or placed in community corrections confinement. The warden ~~shall may~~ pay an inmate all funds in the inmate's account, less the inmate's outstanding obligations to the penitentiary, when the inmate is transferred to a correctional facility outside of this state, The warden shall pay an inmate all funds in the inmate's account, less the inmate's outstanding obligations to the penitentiary, when the inmate is released on parole, or discharged from the penitentiary.

**SECTION 2. AMENDMENT.** Section 12-48-22 of the North Dakota Century Code is amended and reenacted as follows:

**12-48-22. Fines and restitution for misconduct of offender.** The warden, with the approval of the director of the department of corrections and rehabilitation, shall institute and maintain a uniform system of fines and ~~penalties to be deducted~~ restitution for violation of department rules and when an offender causes personal injury or property damage. The warden may deduct the fine or restitution from the compensation any funds credited to any offender for misconduct or refusal to perform the daily task assigned an offender's penitentiary account or Bank of North Dakota two-signature account.

Approved March 6, 2007  
Filed March 7, 2007

**CHAPTER 115****SENATE BILL NO. 2260**

(Senators Robinson, Christmann, Fischer)  
(Representatives Koppelman, Kreidt, Mueller)

**CRIMINAL HISTORY RECORD CHECKS**

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24, a new section to chapter 19-03.1, a new section to chapter 43-12.1, a new subsection to section 43-15-10, a new section to chapter 43-23, and a new section to chapter 43-41 of the North Dakota Century Code, relating to criminal history record checks; to amend and reenact sections 12-60-16.5, 12-60-16.6, 12-60-24, 15.1-06-06, 15.1-13-14, 32-28-02, 50-11-01, 50-11-02.4, 50-11-06.8, 50-11-06.9, 50-11.3-01, and 50-12-03.2, subsection 4 of section 53-06.2-05, and section 54-59-20 of the North Dakota Century Code, relating to criminal history record checks; to provide for limitations on correctional facility construction or remodeling; to provide an expiration date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 12-60-16.5 of the North Dakota Century Code is amended and reenacted as follows:

**12-60-16.5. Criminal history record information - Exchange of information among criminal justice agencies and the courts.** The bureau and other criminal justice agencies shall disclose criminal history record information:

1. To a criminal justice agency that requests the information for its functions as a criminal justice agency or for use in hiring or retaining its employees.
2. To a court, on request, to aid in a decision concerning sentence, probation, ~~or~~ release pending trial or appeal, or a name change petition.
3. Pursuant to a judicial, legislative, or administrative agency subpoena issued in this state.
4. As otherwise expressly required by law.

**SECTION 2. AMENDMENT.** Section 12-60-16.6 of the North Dakota Century Code is amended and reenacted as follows:

**12-60-16.6. Criminal history record information - Dissemination to parties not described in section 12-60-16.5.** Only the bureau may disseminate criminal history record information to parties not described in section 12-60-16.5. The dissemination may be made only if all the following requirements are met:

1. The information has not been purged or sealed.
2. The information is of a conviction, including a conviction for violating section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-06.1, or 12.1-20-11 notwithstanding any disposition following a deferred

imposition of sentence; or the information is of a reportable event occurring within three years preceding the request.

3. The request is written and contains:
  - a. The name of the requester.
  - b. The fingerprints of the record subject or, if the request is made without submitting the fingerprints, the request must also include the name of the record subject-
  - e. ~~At~~ and at least two items of information used by the bureau to retrieve criminal history records, including:
    - (1) ~~The fingerprints of the record subject-~~
    - (2) The state identification number assigned to the record subject by the bureau.
    - (3) (2) The social security number of the record subject.
    - (4) (3) The date of birth of the record subject.
    - (5) (4) A specific reportable event identified by date and either agency or court.
4. The identifying information supporting a request for a criminal history record does not match the record of more than one individual.

In order to confirm a record match, the bureau may contact the requester to collect additional information if a request contains an item of information that appears to be inaccurate or incomplete.

<sup>61</sup> **SECTION 3.** A new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code is created and enacted as follows:

The department of financial institutions for each applicant for a specified occupation with the department as specified by the commissioner and principal owners and managing officers of applicants for a license from the department of financial institutions.

<sup>62</sup> **SECTION 4. AMENDMENT.** Section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>61</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1313, chapter 374, section 1 of House Bill No. 1455, chapter 367, section 2 of House Bill No. 1490, chapter 70, section 1 of Senate Bill No. 2037, chapter 491, and section 4 of Senate Bill No. 2260, chapter 115.

<sup>62</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1313, chapter 374, section 1 of House Bill No. 1455, chapter 367, section 2 of House Bill No. 1490, chapter 70, section 1 of Senate Bill No. 2037, chapter 491, and section 3 of Senate Bill No. 2260, chapter 115.



**12-60-24. Criminal history record checks.**

1. a. ~~The agencies and entities named in subsection 2 shall require each~~ Each applicant, employee, or petitioner for adoption ~~to or~~ name change who is subject to a criminal history record check under subsection 2 shall consent to a statewide and nationwide criminal history record check for the purpose of determining suitability or fitness for a permit, license, registration, employment, or adoption.
  - b. Each applicant, employee, registrant, or petitioner for adoption or name change subject to a criminal history record check shall provide to the requesting agency or entity written consent to conduct the check and to release or disclose the information in accordance with state and federal law, two sets of fingerprints from a law enforcement agency or other local agency authorized to take fingerprints, any other identifying information requested, and a statement indicating whether the applicant or employee has ever been convicted of a crime.
  - c. The agency, official, or entity shall submit these fingerprints to the bureau of criminal investigation for nationwide criminal history record information that includes resubmission of the fingerprints by the bureau of criminal investigation to the federal bureau of investigation. Except if otherwise provided by law, federal bureau of investigation criminal history record information obtained by an agency or entity is confidential. For a request for nationwide criminal history record information made under this section, the bureau of criminal investigation is the sole source to receive the fingerprint submissions and responses from the federal bureau of investigation. A person who takes fingerprints under this section may charge a reasonable fee to offset the cost of fingerprinting. Unless otherwise provided by law, the bureau of criminal investigation may charge appropriate fees for criminal history information.
2. The bureau of criminal investigation shall provide to each agency, official, or entity listed in this subsection who has requested a statewide and nationwide criminal history record check, the response of the federal bureau of investigation and any statewide criminal history record information that may lawfully be made available under this chapter:
    - a. The governing body of a city or a county, by ordinance or resolution, for ~~each~~ a final applicant for a specified occupation with the city or county.
    - b. The agriculture commissioner for each applicant for a license to grow industrial hemp under section 4-41-02.
    - c. The education standards and practices board for initial, reentry, and reciprocal teacher licenses under sections 15.1-13-14 and 15.1-13-20 and school guidance and counseling services under section 15.1-13-23.
    - d. The medical examiners board for licenses or disciplinary investigations under section 43-17-07.1, except that criminal

- history record checks need not be made unless required by the board.
- e. The private investigative and security board for licenses or registrations under section 43-30-06.
  - f. The department of human services department for foster care licenses under ~~section 50-11-06.8~~ chapter 50-11, appointments of legal guardians under ~~section 50-11.3-04~~ chapter 50-11.3, and petitions for adoptions under ~~section 50-12-03.2~~ chapter 50-12, except that the criminal history record investigation must be conducted in accordance with those ~~sections~~ chapters. A criminal history record investigation completed under chapter 50-11, 50-11.3, or 50-12 may be used to satisfy the requirements of a criminal history record investigation under either of the other two chapters.
  - g. The department of human services department for carecheck registrations under section 50-11.1-06.2.
  - h. The chief information officer of the information technology department for certain ~~employees~~ individuals under section 54-59-20.
  - i. A public peace officer training school that has been approved by the peace officer standards and training board for enrollees in the school. The school may only disclose the criminal history record information as authorized by law. The school shall pay the costs for securing the fingerprints, any criminal history record information made available under this chapter, and for the nationwide criminal history background check. This subdivision does not apply to the highway patrol law enforcement training center and enrollees who have a limited license under section 12-63-09.
  - j. The North Dakota public employees retirement board for individuals first employed by the public employees retirement board after July 31, 2005, who have unescorted physical access to the office or any security-sensitive area of the office as designated by the executive director.
  - k. The executive director of the retirement and investment office for individuals first employed by the retirement and investment office after July 31, 2005, who have unescorted physical access to the office or any security-sensitive area of the office as designated by the executive director.
  - l. The Bank of North Dakota for ~~each~~ a final applicant for a specified occupation with the Bank as designated by the president.
  - m. Job service North Dakota for ~~each~~ a final applicant for a specified occupation with job service as designated by the executive director.
  - n. The state department of health for ~~employees assigned duties related to bioterrorism and homeland security issues~~ a final applicant for or an employee in a specified occupation with the

- department as designated by the state health officer; a nurse aide seeking to have a finding of neglect removed from the nurse aide registry; or an individual being investigated by the state department of health who holds a license, certificate, or registration in a health-related field; or, when requested by the department, an applicant for registration, certification, or licensure by the department.
- o. The board of nursing for applicants, licensees, registrants, or disciplinary investigations under chapter 43-12.1, except that criminal history record checks need not be made unless required by the board.
- p. The state board of pharmacy for applicants or disciplinary investigations under chapter 43-15 and registrations, or revocation or suspension of registrations, under chapter 19-03.1, except that criminal history record checks need not be made unless required by the board.
- q. The state real estate commission for applicants, licensees, or investigations under chapter 43-23, except that criminal history record checks need not be made unless required by the commission.
- r. The North Dakota board of social work examiners for applicants for initial licensure or licensees under chapter 43-41, except that criminal history record checks for licensees need not be made unless required by the board.
- s. All agencies, departments, bureaus, boards, commissions, or institutions of the state, including the North Dakota university system, for all employees or final applicants for employment as a security guard or to otherwise provide security.
- t. The office of management and budget for each individual who has access to personal information as designated by the director.
- u. The department of corrections and rehabilitation for all agents and employees and a final applicant for employment designated by the director and for each agent, employee, or a final applicant for employment of a privately operated entity providing contract correctional services for the department who exercises direct authority over juveniles, inmates, probationers, or parolees.
- v. A city, county, or combination of cities or counties that operates a correctional facility subject to chapter 12-44.1, for each agent and employee and a final applicant for employment of the correctional facility who has direct contact with or exercises direct authority over any juvenile or inmate of the correctional facility, and for each agent, employee, or a final applicant for employment of a privately operated entity providing contract correctional services for the correctional facility who exercises direct authority over juveniles, inmates, probationers, or parolees.
- w. The North Dakota university system for a final applicant for or employee in a specified position in the university system or a

university system institution or for each student applying for or admitted to a specified program of study, as designated by the chancellor.

- x. The governing board of a public school or, for a nonpublic school, the superintendent of public instruction, for employees designated by the governing board or nonpublic school. The governing board or the nonpublic school is responsible for paying the costs associated with obtaining a background check.
- y. The governing board of a public school or, for a nonpublic school, the superintendent of public instruction, for a final applicant seeking employment with the school or otherwise providing services to the school, if that individual has unsupervised contact with the students. For purposes of this subdivision, "unsupervised contact" with students means being in proximity to one or more students, on school grounds or at school functions, outside the presence of an individual who has been subject to a criminal background check. The governing board or the nonpublic school is responsible for paying the costs associated with obtaining a background check.
- z. The racing commission for applicants for licenses under chapter 53-06.2, except that criminal history record checks need not be made unless required by the commission.
- aa. A district court for a petition to change a name under chapter 32-28.

**SECTION 5. AMENDMENT.** Section 15.1-06-06 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-06-06. Approval of public and nonpublic schools.** Each public and nonpublic school in this state offering elementary or secondary education to students must be approved by the superintendent of public instruction. Except as otherwise provided by law, the superintendent may not approve a school unless:

1. Each classroom teacher is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;
2. Each classroom teacher is teaching only in those course areas or fields for which the teacher is licensed or for which the teacher has received an exception under section 15.1-09-57;
3. The students are offered all subjects required by law; ~~and~~
4. The school is in compliance with all local and state health, fire, and safety laws; and
5. The school has conducted all criminal history record checks required by section 12-60-24.

**SECTION 6. AMENDMENT.** Section 15.1-13-14 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-13-14. Initial and reentry licensure of teachers - Criminal history record check.** The board shall check, or cause to be checked, the criminal history record of each applicant for initial licensure and reentry licensure as a teacher in accordance with section 12-60-24. All costs associated with the background check and with obtaining and processing the fingerprints are the responsibility of the applicant. Criminal history records provided to the board pursuant to this section are confidential and closed to the public and may only be used by the board for determining an applicant's eligibility for licensure and obtaining documentation to support a denial of licensure.

**SECTION 7.** A new section to chapter 19-03.1 of the North Dakota Century Code is created and enacted as follows:

**Criminal history record checks.** The board may require an applicant for registration or a registrant whose registration is subject to revocation or suspension or employees or officers of an applicant or registrant to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant or registrant.

**SECTION 8. AMENDMENT.** Section 32-28-02 of the North Dakota Century Code is amended and reenacted as follows:

**32-28-02. Change of name of person - Petition - Criminal history record checks - Exceptions.**

1. Any person desiring to change that person's name may file a petition in the district court of the county in which the person is a resident, setting forth:
  - a. That the petitioner has been a bona fide resident of the county for at least six months before the filing of the petition.
  - b. The reason for which the change of the petitioner's name is sought.
  - c. The name requested.
2. When an individual files a petition for a name change, the court shall determine whether the petitioner has a criminal history in this state or any other state. The court may require the petitioner to submit to a statewide and nationwide criminal history record check. The criminal history record check must be conducted in the manner provided for in section 12-60-24. All costs associated with the criminal history record check are the responsibility of the petitioner. This subsection does not apply to a request for a name change as part of an application for a marriage license under section 14-03-20, to a request for a name change in conjunction with the annulment of a marriage under chapter 14-04 or the dissolution or separation of a marriage under chapter 14-05, or to the change of a minor's name unless the court has reason to believe the request is being made to defraud or mislead, is not being made in good faith, will cause injury to an individual, or will compromise public safety. If the individual petitioning for a name change has a felony conviction under a law of this state or a law of another state or the federal government, the request is presumed to be made in bad faith, to defraud or mislead, to cause injury to an individual, or to compromise

public safety. The name change may not be granted unless the individual requesting the name change proves by clear and convincing evidence that the request is not based upon an intent to defraud or mislead, is made in good faith, will not cause injury to an individual, and will not compromise public safety.

3. The judge of the district court, upon being duly satisfied by affidavit or proof in open court of the truth of the allegations set forth in the petition, 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 the official newspaper of the county in which the petitioner resides, shall order a change of the name of the petitioner. Proper and reasonable cause does not exist if the court determines that the request for a name change is made to defraud or mislead, is not made in good faith, will cause injury to an individual, or will compromise public safety. The court may waive publication of the notice when the proposed change relates only to a first or given name as distinguished from a surname or upon evidence satisfactory to the court that the petitioner has been the victim of domestic violence as defined in section 14-07.1-01.
- ~~3-~~ 4. If the person whose name is to be changed is a minor, the court shall consider the appointment of a guardian ad litem, and notice of the intended application must be published in the official newspaper of the county in which the minor resides and, if different, the official newspaper of the county in which each of the minor's parents reside. If the minor has a noncustodial parent, a copy of the notice must be deposited in a post office in this state, postage prepaid, not later than ten days after the publication of the notice, and directed to the noncustodial parent's last reasonably ascertained post-office address. An affidavit of mailing of the notice prepared in accordance with the North Dakota Rules of Civil Procedure must be filed with the court.
5. If the court issues a name change order for a petitioner who has a criminal history in this or any other state, the court, within ten days after the issuance of the change of name order, shall report the name change to the bureau of criminal investigation.
6. The provisions of this section may not delay the granting of a marriage license under section 14-03-20, which may be granted without the change of name.

**SECTION 9.** A new section to chapter 43-12.1 of the North Dakota Century Code is created and enacted as follows:

**Nursing licensure or registration - Criminal history record checks.** The board may require each applicant for initial or renewed nursing licensure or registration and any licensee or registrant who is the subject of a disciplinary investigation or proceeding to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant, licensee, or registrant. The board may grant a nonrenewable temporary permit to an applicant for initial or renewed license or registration who submits to a criminal history record check as required by this chapter if the applicant has met all other licensure or registration requirements in accordance with subsection 2 of section 43-12.1-09.

<sup>63</sup> **SECTION 10.** A new subsection to section 43-15-10 of the North Dakota Century Code is created and enacted as follows:

To require information regarding an applicant's or licensee's fitness, qualifications, and previous professional record and performance from recognized data sources, including the national association of boards of pharmacy data bank, other data repositories, licensing and disciplinary authorities of other jurisdictions, professional education and training institutions, liability insurers, health care institutions, and law enforcement agencies be reported to the board. The board may require an applicant for licensure or a licensee who is the subject of a disciplinary investigation to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a background check are the responsibility of the licensee or applicant.

**SECTION 11.** A new section to chapter 43-23 of the North Dakota Century Code is created and enacted as follows:

**Criminal history record checks.** The commission may require an applicant for licensure or a licensee whose licensure is subject to investigation by the commission to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant or licensee.

**SECTION 12.** A new section to chapter 43-41 of the North Dakota Century Code is created and enacted as follows:

**Criminal history record and child abuse and neglect checks.**

1. The board shall require each applicant for licensure and may require any licensee to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided in section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant.
2. The board shall require from each applicant for licensure and may require from any licensee written consent to a child abuse information index check and authorization for the department of human services or its designee to release to the board reports of decisions that services are required for child abuse or neglect filed pursuant to section 50-25.1-05.2. All information obtained from the department or its designee is confidential and closed to the public except that it may be disclosed for use in an adjudicative or judicial proceeding. All costs associated with obtaining the reports are the responsibility of the applicant or licensee.

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<sup>63</sup> Section 43-15-10 was also amended by section 3 of House Bill No. 1054, chapter 363.

**SECTION 13. AMENDMENT.** Section 50-11-01 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-01. Foster care for children - License required.** No person may furnish foster care for children for more than thirty days during a calendar year without first procuring a license to do so from the department. The mandatory provisions of this section requiring licensure do not apply when the care is provided in:

1. The home of a person related to the child by blood or marriage.
2. A home or institution under the management and control of the state or a political subdivision.
3. A home or facility furnishing room and board primarily to accommodate the child's educational or career and technical education needs.

A person providing care under subsection 1 shall submit to a criminal history record investigation as required under section 50-11-06.8.

**SECTION 14. AMENDMENT.** Section 50-11-02.4 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-02.4. Criminal history record investigation - Fingerprinting not required.**

1. ~~a. Except as provided in section 50-11-06.9, each facility providing foster care for children shall secure from any individual employed by the facility and any adult living in the facility, but not being provided care in the facility, identifying information other than fingerprints, that is appropriate to accomplish a statewide criminal history record investigation.~~
  - ~~b. Except as provided in section 50-11-06.9, the department shall secure from any individual employed by, or providing care in, an adult family foster care facility and any adult living in the facility, but not being provided care in the facility, identifying information other than fingerprints, that is appropriate to accomplish a statewide criminal history record investigation.~~
2. Fingerprints need not be taken and a nationwide background check need not be made if an individual:
  - a. Has resided continuously in this state for eleven years or since reaching age eighteen, whichever is less;
  - b. Is on active United States military duty or has resided continuously in this state since receiving an honorable discharge; or
  - c. Is excused from providing fingerprints under rules adopted by the department.
3. The department shall verify that sufficient identifying information has been provided. Upon verification, the department shall submit that information to the bureau of criminal investigation.



4. The bureau of criminal investigation shall provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department. The department shall provide a copy of any response received from the bureau of criminal investigation to the facility.
5. The department shall pay the cost of securing any criminal history record information made available under chapter 12-60.
6. The department shall consult with the bureau of criminal investigation to determine the identifying information, other than fingerprints, appropriate to accomplish a statewide criminal history record investigation.
7. The department may adopt emergency rules under this section without the finding otherwise required under section 28-32-02.

**SECTION 15. AMENDMENT.** Section 50-11-06.8 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-06.8. Criminal history record investigation - Fingerprinting required.**

1. ~~Except as provided in sections 50-11-02.4 and 50-11-06.9, each~~ Each facility providing foster care for children shall secure, from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law from:
  - a. Any individual employed by, or providing care in, the facility; and
  - b. Any adult living in the facility, but not being provided care in the facility.
2. The facility shall assure that information obtained under subsection 1 is provided to the department.
3. Upon receipt of all fingerprints and necessary information relating to a license request, the department shall submit the information and fingerprints to the bureau of criminal investigation. The department shall provide a copy of any response received from the bureau of criminal investigation to the facility.
4. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of a response, provide the response of the federal bureau of investigation to the department. The bureau shall also provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department.
5. Upon request by the operators of a facility, a law enforcement agency shall take fingerprints of persons described in this section if the request is made for purposes of this section.

6. The department shall pay the cost of securing fingerprints, any criminal history record information made available under chapter 12-60, and a nationwide background check.
7. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the costs of the fingerprinting.
8. Except as provided in sections 50-11-02.4 and 50-11-06.9, the department shall secure from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and all other information necessary to secure state criminal history record information and a nationwide background check under federal law from:
  - a. Any individual employed by, or providing care in, an adult family foster care facility; and
  - b. Any adult living in an adult family foster care facility, but not being provided care in the facility.
9. A criminal history record investigation completed under this section may be used to satisfy the criminal history record investigation requirements of sections 50-11.3-01 and 50-12-03.2.

**SECTION 16. AMENDMENT.** Section 50-11-06.9 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-06.9. Criminal history record investigation - When not required.** A criminal history record investigation may not be required, under section 50-11-06.8 or 50-11-02.4, of a family foster care home for ~~children or of a family foster care home for~~ adults licensed or approved on August 1, 1999, for so long as that home remains continuously licensed or approved.

**SECTION 17. AMENDMENT.** Section 50-11.3-01 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.3-01. Criminal history record investigation required.**

1. Before appointment as a legal guardian under chapter 27-20, the individual to be appointed legal guardian must be subject to an assessment that includes the result of a criminal history record investigation made under this section. In addition, any adult living in the household of the individual to be appointed legal guardian must be subject to a criminal history record investigation made under this section.
2. ~~Except as provided in subsection 6, an~~ An individual to be appointed legal guardian or any adult living in that individual's household as described in subsection 1 shall secure, from a law enforcement agency or other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law. Upon a request made under this section, a law enforcement agency shall take fingerprints of any individual to be appointed legal guardian or any adult living in that individual's household as described in subsection 1 and may charge a reasonable fee to offset the cost of fingerprinting.

3. An individual to be appointed legal guardian or any adult living in that individual's household as described in subsection 1 shall assure that information obtained under subsection 2 is provided to the department of human services.
  4. Upon receipt of all fingerprints and necessary information relating to a criminal history record investigation, the department of human services shall submit those fingerprints and that information to the bureau of criminal investigation.
  5. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of a response, provide the response of the federal bureau of investigation to the department of human services. The bureau of criminal investigation shall also provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department of human services. The bureau of criminal investigation may charge a reasonable fee to offset the cost of providing any criminal history record information and may require payment of any charge imposed by the federal bureau of criminal investigation for a nationwide background check.
  6. ~~Fingerprints need not be taken and a nationwide background check need not be made if an individual:~~
    - a. ~~Has resided continuously in this state for eleven years or since reaching age eighteen, whichever is less;~~
    - b. ~~Is on active United States military duty or has resided continuously in this state since receiving an honorable discharge; or~~
    - c. ~~Is excused from providing fingerprints under rules adopted by the department of human services.~~
  7. The department of human services shall provide an individual to be appointed legal guardian or any adult living in that individual's household, who provided the department with information under subsection 2, with any information received under this section from the bureau of criminal investigation which the department of human services is not prevented by federal law from disclosing to the individual to be appointed legal or any adult living in that individual's household.
- 8- 7. The department of human services may adopt emergency rules under this section without the finding otherwise required under section 28-32-02.
8. A criminal history record investigation completed under this section may be used to satisfy the criminal history record investigation requirements of sections 50-11-06.8 and 50-12-03.2.

**SECTION 18. AMENDMENT.** Section 50-12-03.2 of the North Dakota Century Code is amended and reenacted as follows:

**50-12-03.2. Criminal history record investigation required.**

1. A child-placing agency shall include, in any adoptive home study report, the results of a criminal history record investigation made under this section. If the results reveal a conviction of a crime described in chapter 50-11.3, the home study report must include a determination that a home provided by the prospective adoptive parent is not a suitable home for the placement of any child and a recommendation that the petition for adoption be denied. A child-placing agency shall consider any criminal history record information available when making a recommendation in a home study report.
2. ~~Except as provided in subsection 6,~~ a A child-placing agency shall secure, from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law from any prospective adoptive parent and any adult living in the prospective adoptive parent's household. Upon a request of a child-placing agency, a law enforcement agency shall take fingerprints of any prospective adoptive parent and any adult living in the prospective adoptive parent's household for purposes of this section. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the cost of fingerprinting.
3. The child-placing agency shall assure that information obtained under subsection 2 is provided to the department of human services and shall arrange payment to the bureau of criminal investigation sufficient to defray the cost of securing criminal history record information under this section.
4. Upon receipt of all fingerprints and necessary information relating to a criminal history record investigation, the department of human services shall submit those fingerprints and that information to the bureau of criminal investigation.
5. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of a response, provide the response of the federal bureau of investigation to the department of human services. The bureau of criminal investigation shall also provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department.
6. ~~Fingerprints need not be taken and a nationwide background check need not be made if a prospective adoptive parent:~~
  - a. ~~Has resided continuously in this state for eleven years or since reaching age eighteen, whichever is less;~~
  - b. ~~Is on active United States military duty or has resided continuously in this state since receiving an honorable discharge; or~~

- e. ~~Is excused from providing fingerprints under rules adopted by the department of human services.~~
7. The department of human services shall provide the child-placing agency with any information, received under this section from the bureau of criminal investigation, that the department of human services is not prevented by federal law from disclosing to the child-placing agency.
8. 7. The department of human services may adopt emergency rules under this section without the finding otherwise required under section 28-32-02.
8. A criminal history record investigation completed under this section may be used to satisfy the criminal history record investigation requirements of sections 50-11-06.8 and 50-11.3-01.

<sup>64</sup> **SECTION 19. AMENDMENT.** Subsection 4 of section 53-06.2-05 of the North Dakota Century Code is amended and reenacted as follows:

4. License all participants in the racing and simulcast parimutuel wagering industry and require and obtain information the commission deems necessary from license applicants. The commission may obtain a statewide and nationwide criminal history record check from the bureau of criminal investigation, without charge, criminal history record information as required in the licensing process for the purpose of determining suitability or fitness for a license. The nationwide check must be conducted in the manner provided in section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant for a license.

<sup>65</sup> **SECTION 20. AMENDMENT.** Section 54-59-20 of the North Dakota Century Code is amended and reenacted as follows:

**54-59-20. Employees of the department - Security background information.** The chief information officer shall require as a condition of employment with the department that individuals who have unescorted physical access to the facilities or other security sensitive areas of the department designated by the chief information officer submit to a criminal history record check in accordance with section 12-60-24. The chief information officer may require as a condition of contracting with the department or other state agency or department with respect to an information technology project that any individual employed by the contractor or a subcontractor to perform the work under the contract submit to a criminal history record check in accordance with section 12-60-24.

**SECTION 21. DEPARTMENT OF CORRECTIONS AND REHABILITATION FACILITIES.** Notwithstanding North Dakota Century Code section 54-23.3-04, the director of the department of corrections and rehabilitation may not advertise for bids

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<sup>64</sup> Section 53-06.2-05 was also amended by section 3 of House Bill No. 1126, chapter 448.

<sup>65</sup> Section 54-59-20 was also amended by section 6 of Senate Bill No. 2037, chapter 491.

or issue a request for qualifications for a construction manager for construction of a new correctional facility or remodeling of the existing state penitentiary until the concept is authorized by the emergency commission and approved by the budget section.

**SECTION 22. EXPIRATION DATE.** Section 21 of this Act is effective through June 30, 2009, and after that date is ineffective.

**SECTION 23. EMERGENCY.** Sections 3, 13, 14, 15, 16, 17, and 18 of this Act are declared to be an emergency measure.

Approved April 30, 2007  
Filed May 1, 2007

**CHAPTER 116****HOUSE BILL NO. 1504**

(Representatives Charging, Froelich, Onstad)  
(Senators Marcellais, Warner)

**TRIBAL POLICE OFFICER LICENSING**

AN ACT to create and enact a new section to chapter 12-63 of the North Dakota Century Code, relating to tribal police officers.

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

**SECTION 1.** A new section to chapter 12-63 of the North Dakota Century Code is created and enacted as follows:

**Tribal police officers.**

1. A tribal police officer of a federally recognized Indian tribe in this state who meets the requirements of this chapter and the rules adopted by the board is eligible for a peace officer license or part-time peace officer license.
2. The board shall issue a peace officer license or part-time peace officer license to a tribal police officer who is eligible for a peace officer license or part-time peace officer license under this section and who has paid the prescribed license fee if:
  - a. The tribal police officer has been appointed as a special deputy in accordance with section 11-15-02;
  - b. The tribal police officer is employed by the state or a political subdivision; or
  - c. There is an agreement between the state or a political subdivision and the tribe for tribal police officers to perform law enforcement services.
3. A tribal police officer who is a member of a police force of a tribal government and who is licensed under this section may exercise the powers of a peace officer of this state within the exterior boundaries of the reservation, or off the reservation, in accordance with the terms and conditions of the special deputy appointment, the employment agreement, or the agreement between the state or political subdivision and the tribe.
4. A tribal police officer who has a peace officer license under this section is subject to this chapter and the rules adopted by the board, including requirements for license renewal or reinstatement, annual sidearm qualification, and continuing education.
5. The state or political subdivision is not liable for any act or omission of a tribal police officer exercising peace officer powers authorized by an agreement between the state or a political subdivision and a tribe.

6. This section does not diminish or expand the jurisdiction of any tribe or the state.

Approved May 1, 2007  
Filed May 2, 2007



**CHAPTER 117****SENATE BILL NO. 2029**

(Legislative Council)

(Commission on Alternatives to Incarceration)

**ELECTRONIC HOME DETENTION AND GPS  
MONITORING**

AN ACT to create and enact a new chapter to title 12 of the North Dakota Century Code, relating to electronic home detention and global positioning system monitoring for certain offenders; and to amend and reenact subdivision b of subsection 3 of section 12.1-08-06 of the North Dakota Century Code, relating to the definition of official detention.

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

**SECTION 1.** A new chapter to title 12 of the North Dakota Century Code is created and enacted as follows:

**Definitions.** As used in this chapter:

1. "Approved electronic monitoring device" means a global positioning system device or other electronic monitoring device approved by the department or the court which is primarily intended to actively or passively monitor, record, and transmit confirmation of a participant's location or the participant's presence or nonpresence in the home.
2. "Court" means the district or municipal court having criminal or juvenile jurisdiction to place a participant in electronic home detention or global positioning system monitoring.
3. "Department" means the department of corrections and rehabilitation.
4. "Home detention" means the confinement of an individual adjudicated, convicted, or charged with an offense to the individual's place of residence under the terms and conditions established by the court or the department.
5. "Participant" means an adult or juvenile offender placed into an electronic monitoring program.

**Application.** Except for an offense for which the law requires mandatory incarceration, electronic home detention or global positioning system monitoring may be used for adult and juvenile offenders as selected by the court, the parole board, or the department for adult offenders as an intermediate measure of supervised probation, and for delinquent juvenile offenders in the custody of the division of juvenile services as a condition of community placement. Electronic home detention and global positioning system monitoring may be used for the following:

1. Pretrial or preadjudicatory detention.
2. Probation.

3. Community corrections approved by the court.
4. Parole.
5. Work release under chapter 12-44.1 or approved by the parole board.
6. Institutional release approved by the court or the parole board.
7. County jail diversion approved by the court.
8. Sex offender containment.

**Program description.**

1. Subject to the availability of funding, the court or, with the approval of the court, the department or a correctional facility subject to chapter 12-44.1 may implement an electronic home detention and global positioning system monitoring program.
2. A participant may be required to remain within the interior premises or within the property boundaries of the participant's residence at all times during the hours designated by the court, the parole board, or the department. Instances of approved absences from the residence may include:
  - a. Work or employment approved by the court, the parole board, or the department or traveling to or from approved employment;
  - b. Unemployment and seeking employment approved for the participant by the court, the parole board, or the department;
  - c. Medical, psychiatric, mental health treatment, counseling, or other treatment programs approved for the participant by the court, the parole board, or the department;
  - d. Attendance at an educational institution or a program approved for the participant by the court, the parole board, or the department;
  - e. Attendance at a regularly scheduled religious service at a place of worship;
  - f. Participation in a community work release or community service program approved for the participant by the court, the parole board, or the department; or
  - g. For another compelling reason consistent with the public interest, as approved by the court, the parole board, or the department.
3. A participant shall admit any individual or agent designated by the court, the parole board, or the department into the participant's residence at any time for purposes of verifying the participant's compliance with the conditions of the participant's detention.
4. A participant shall make the necessary arrangements to allow for any individual or agent as designated by the court, the parole board, or the department to visit the participant's place of education or employment at

any time, based upon the approval of the educational institution or employer, for the purpose of verifying the participant's compliance with the conditions of the participant's detention.

5. A participant shall acknowledge and participate in the approved electronic monitoring program as designated by the court, the parole board, or the department at any time for the purpose of verifying the participant's compliance with the conditions of the participant's detention.
6. A participant shall maintain the following:
  - a. A monitoring device in the participant's residence or on the participant's person, or both; and
  - b. A working telephone in the participant's residence or in the absence of a telephone a monitoring device in the participant's residence and on the participant's person.
7. A participant shall obtain approval from the court, the parole board, or the department before the participant changes residence or the schedule described in subsection 2.
8. The court, the parole board, or the department shall inform a participant that violation of the order for home detention may subject the participant to prosecution or adjudication for the offense of escape from official detention.
9. A participant shall abide by other conditions as set by the court, the parole board, or the department.
10. An approved electronic monitoring device may be used to record a conversation between a participant and the monitoring device or the participant and the individual supervising the participant solely for the purpose of identification and not for the purpose of eavesdropping or conducting any other illegally intrusive monitoring.

**Consent of the participant.** Before entering an order for commitment for electronic home detention or global positioning system monitoring, the court, the parole board, or the department shall inform the participant and other individuals residing in the residence of the nature and extent of the approved electronic monitoring devices by securing the written consent of the participant in the program and ensuring that the approved electronic devices be minimally intrusive upon the privacy of the participant and other individuals residing in the residence.

**SECTION 2. AMENDMENT.** Subdivision b of subsection 3 of section 12.1-08-06 of the North Dakota Century Code is amended and reenacted as follows:

- b. "Official detention" means arrest, custody following surrender in lieu of arrest, detention in any facility for custody of persons under charge or conviction of an offense or alleged or found to be delinquent, detention under a law authorizing civil commitment in lieu of criminal proceedings or authorizing such detention while criminal proceedings are held in abeyance, detention for extradition, home detention as authorized by section 1 of this Act, or custody for purposes incident to the foregoing, including transportation, medical diagnosis or treatment, court appearances, work, and recreation, or being absent without permission from any release granted while under custody of a sentence such as work or education release, community confinement, or other temporary leaves from a correctional or placement facility, ~~but "official"~~ "Official" detention does not include supervision on probation or parole or constraint incidental to release.

Approved April 3, 2007  
Filed April 4, 2007

# CRIMINAL CODE

## CHAPTER 118

### SENATE BILL NO. 2185

(Senators Kilzer, Christmann)  
(Representatives Kaldor, Weiler)

### SERIOUS BODILY INJURY DEFINED

AN ACT to amend and reenact subsection 29 of section 12.1-01-04 of the North Dakota Century Code, relating to the definition of serious bodily injury.

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

**SECTION 1. AMENDMENT.** Subsection 29 of section 12.1-01-04 of the North Dakota Century Code is amended and reenacted as follows:

29. "Serious bodily injury" means bodily injury that creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, permanent loss or impairment of the function of any bodily member or organ, ~~or~~ a bone fracture, or impediment of air flow or blood flow to the brain or lungs.

Approved March 7, 2007  
Filed March 8, 2007

**CHAPTER 119****HOUSE BILL NO. 1122**

(Judiciary Committee)

(At the request of the Commission on Legal Counsel for Indigents)

**LEGAL COUNSEL FOR INDIGENTS**

AN ACT to amend and reenact subsection 3 of section 12.1-04.1-23, subsection 2 of section 12.1-04.1-26, subsection 4 of section 12.1-32-07, subdivision a of subsection 4 of section 12.1-32-08, subsection 6 of section 14-15-19, subsection 2 of section 23-07.6-03, sections 23-07.6-05, 23-07.6-06, and 25-01.2-11, subsection 2 of section 27-20-17, subsection 4 of section 27-20-22, section 27-20-26, subsections 2 and 3 of section 27-20-49, and sections 27-22-02, 29-07-01.1, 29-32.1-05, and 31-01-16 of the North Dakota Century Code, relating to providing legal counsel at public expense.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 12.1-04.1-23 of the North Dakota Century Code is amended and reenacted as follows:

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 must be provided at public expense to consult with the individual and, ~~if appropriate the individual is indigent, to apply to the court for appointment~~ seek arrangement of counsel at public expense to represent the individual in a proceeding for conditional release or discharge.

**SECTION 2. AMENDMENT.** Subsection 2 of section 12.1-04.1-26 of the North Dakota Century Code is amended and reenacted as follows:

2. In a proceeding under sections 12.1-04.1-20 through 12.1-04.1-25 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~~ is indigent and that counsel is not otherwise available, ~~it shall appoint~~ counsel must be provided at public expense to represent the individual.

<sup>66</sup> **SECTION 3. AMENDMENT.** Subsection 4 of section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>66</sup> Section 12.1-32-07 was also amended by section 5 of House Bill No. 1015, chapter 15, and section 1 of Senate Bill No. 2241, chapter 135.

4. When imposing a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the court may impose such conditions as it deems appropriate and may include any one or more of the following:
  - a. Work faithfully at a suitable employment or faithfully pursue a course of study or of career and technical education training that will equip the defendant for suitable employment.
  - b. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
  - c. Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.
  - d. Support the defendant's dependents and meet other family responsibilities.
  - e. Make restitution or reparation to the victim of the defendant's conduct for the damage or injury which was sustained or perform other reasonable assigned work. When restitution, reparation, or assigned work is a condition of probation, the court shall proceed as provided in subsection 1 or 2, as applicable, of section 12.1-32-08.
  - f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05, except when imposition of sentence is deferred.
  - g. Refrain from excessive use of alcohol or any use of narcotics or of another dangerous or abusable drug without a prescription.
  - h. Permit the probation officer to visit the defendant at reasonable times at the defendant's home or elsewhere.
  - i. Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.
  - j. Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment.
  - k. Report to a probation officer at reasonable times as directed by the court or the probation officer.
  - l. Submit to a medical examination or other reasonable testing for the purpose of determining the defendant's use of narcotics, marijuana, or other controlled substance whenever required by a probation officer.
  - m. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.
  - n. Submit the defendant's person, place of residence, or vehicle to search and seizure by a probation officer at any time of the day or night, with or without a search warrant.

- o. Serve a term of imprisonment of up to one-half of the maximum term authorized for the offense of which the defendant was convicted or one year, whichever is less.
- p. Reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed or provided at public expense for the defendant. When reimbursement of indigent defense costs and expenses is imposed as a condition of probation, the court shall proceed as provided in subsection 4 of section 12.1-32-08.
- q. Provide community service for the number of hours designated by the court.
- r. Refrain from any subscription to, access to, or use of the internet.

**SECTION 4. AMENDMENT.** Subdivision a of subsection 4 of section 12.1-32-08 of the North Dakota Century Code is amended and reenacted as follows:

- a. Under section 12.1-32-07, the court may order that the defendant reimburse indigent defense costs and expenses as a condition of probation. The court shall notify the defendant, the defendant's probation officer, and the prosecuting attorney of the amount of costs and expenses to be reimbursed, as determined by the commission on legal counsel for indigents, and of the defendant's right to a hearing on the reimbursement amount. It is a rebuttable presumption that reasonable reimbursement of costs and expenses consists of seventy-five dollars per hour for ~~appointed~~ counsel services plus reasonable expenses. The reimbursement amount must include an application fee imposed under section 29-07-01.1 if the fee has not been paid before disposition of the case and the court has not waived payment of the fee. If the defendant requests a hearing within thirty days of receiving notice under this subdivision, the court shall schedule a hearing at which the basis for the amount to be reimbursed must be demonstrated. In determining the amount and method of reimbursement, the court shall consider the financial resources of the defendant and the nature of the burden that reimbursement of costs and expenses will impose.

**SECTION 5. AMENDMENT.** Subsection 6 of section 14-15-19 of the North Dakota Century Code is amended and reenacted as follows:

- 6. Before the petition is heard, notice of the hearing on the petition and opportunity to be heard must be given the parents of the child, the guardian of the child, the person having legal custody of the child, any proposed custodian of the child, and, in the discretion of the court, a person ~~appointed to represent~~ representing any party.

**SECTION 6. AMENDMENT.** Subsection 2 of section 23-07.6-03 of the North Dakota Century Code is amended and reenacted as follows:

- 2. Isolation or quarantine with notice.



- a. Authorization. The state or a local health officer may make a written petition to the trial court for an order authorizing the isolation or quarantine of an individual or groups of individuals.
- b. Content of petition. A petition under subdivision a must specify the identity of the individual or groups of individuals subject to isolation or quarantine, including identification by characteristics if actual identification is impossible or impractical; the premises subject to isolation or quarantine; the date and time at which isolation or quarantine commences; the suspected contagious disease if known; recommended decontamination, treatment, or preventative measures for the suspected contagious disease; a statement of compliance with the conditions and principles authorizing isolation and quarantine under this chapter; and a statement of the basis upon which isolation or quarantine is justified in compliance with this chapter. The petition must be accompanied by the sworn affidavit of the state or local health officer attesting to the facts asserted in the petition, with any further information that may be relevant and material to the court's consideration.
- c. Notice. Notice to the individuals or groups of individuals identified in the petition must be accomplished within twenty-four hours in accordance with the North Dakota Rules of Civil Procedure. The notice must include a statement that the respondent has the right to counsel, including ~~appointed~~ counsel provided at public expense if indigent and must include a copy of this chapter.

**SECTION 7. AMENDMENT.** Section 23-07.6-05 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.6-05. Court hearing.** A hearing must be held on a petition filed under subsection 2 of section 23-07.6-03 within five days of filing the petition. For a good cause shown, the court may continue the hearing for up to ten days. A respondent has the right to a court hearing in the district court serving the county in which the respondent resides. A record of the proceedings pursuant to this section must be made and retained. If parties cannot personally appear before the court due to risks of contamination or the spread of disease, proceedings may be conducted by their authorized representatives and be held via any means that allows all parties to fully participate. The respondent has a right to counsel and if the respondent is indigent ~~or otherwise unable to pay for or obtain counsel~~, the respondent has the right to have counsel ~~appointed~~ provided at public expense. The respondent, respondent's representative, or respondent's counsel has the right to cross-examine witnesses testifying at the hearing. A petition for a hearing does not stay a written directive ordering confinement. The court shall determine by a preponderance of the evidence if the respondent is infected with a communicable disease, if the respondent poses a substantial threat to the public health, and if confinement is necessary and is the least restrictive alternative to protect or preserve the public health. The court shall also determine whether to order the respondent to follow the state or local health ~~officers~~ officer's directive for decontamination, treatment, or preventative measures if the petition is granted. If the written directive was issued by a local health officer, the state health officer has the right to be made a party to the proceedings.

**SECTION 8. AMENDMENT.** Section 23-07.6-06 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.6-06. Notice of hearing.** Notice of the hearing must be given to the respondent and must inform the respondent of the respondent's right to counsel or ~~appointed~~ counsel at public expense under this chapter and must include a copy of this chapter.

**SECTION 9. AMENDMENT.** Section 25-01.2-11 of the North Dakota Century Code is amended and reenacted as follows:

**25-01.2-11. Psychosurgery, sterilization, or research - Court order required - Hearing - Right to ~~court-appointed~~ attorney at public expense - Application to residential institution or facility.** A court of competent jurisdiction may issue the orders required for the procedures or treatments in subsection 4 of section 25-01.2-09 upon application of the party alleging the necessity of the procedure, the person who is receiving or is entitled to receive the treatment, or the person's guardian, following a hearing on the application.

1. The person receiving or entitled to treatment shall:
  - a. Receive prior notice of the hearing;
  - b. Have the right and the opportunity to present evidence; and
  - c. Have the right to be confronted with and to cross-examine witnesses.
2. If the developmentally disabled person ~~cannot afford counsel, the court is indigent, counsel shall appoint an attorney~~ cannot afford counsel, the court is indigent, counsel shall appoint an attorney be provided at public expense not less than ten days before the hearing.
3. The burden of proof is on the party alleging the necessity of the procedure or treatment.
4. An order allowing the procedure or treatment may not be granted unless the party alleging the necessity of the procedure or treatment proves by clear and convincing evidence that the procedure is in the best interest of the recipient and that no less drastic measures are feasible.

This section applies only with respect to an institution or facility that provides residential care.

<sup>67</sup> **SECTION 10. AMENDMENT.** Subsection 2 of section 27-20-17 of the North Dakota Century Code is amended and reenacted as follows:

2. If the child is not released, a judge or referee shall hold a detention or shelter care hearing promptly and not later than ninety-six hours after 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 the child's detention or shelter care is required under section 27-20-14. Reasonable notice thereof, either oral or written, stating the time, place,

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<sup>67</sup> Section 27-20-17 was also amended by section 10 of House Bill No. 1092, chapter 274.

and purpose of the detention or shelter care hearing must be given to the child and, if they can be found, to the child's 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~~ appointed counsel at public expense if they are ~~needy persons~~ indigent, and of the child's right to remain silent with respect to any allegations of delinquency or unruly conduct.

**SECTION 11. AMENDMENT.** Subsection 4 of section 27-20-22 of the North Dakota Century Code is amended and reenacted as follows:

4. The summons must state that a party is entitled to counsel in the proceedings and that ~~the court will appoint~~ counsel will be provided at public expense if the party is ~~unable without undue financial hardship to employ counsel~~ indigent.

<sup>68</sup> **SECTION 12. AMENDMENT.** Section 27-20-26 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-26. Right to counsel.**

1. Except as otherwise provided under this chapter, a party is entitled to representation by legal counsel at custodial, post-petition, and informal adjustment stages of proceedings under this chapter and, if ~~as a needy person the party is unable to employ counsel~~ indigent, to have ~~the court provide~~ counsel provided at public expense for the party. If a party appears without counsel the court shall ascertain whether the party knows of the party's right to counsel and to be provided with counsel ~~by the court if the party is a needy person~~ at public expense, if indigent. The court may continue the proceeding to enable a party to obtain counsel and ~~shall provide~~ counsel shall be provided for an unrepresented ~~needy~~ indigent person upon the person's request. Counsel must be provided for a child not represented by the child's parent, guardian, or custodian at custodial, post-petition, and informal adjustment stages of proceedings under this chapter. If the interests of two or more parties conflict, separate counsel must be provided for each of them.
2. A ~~needy~~ An indigent person is one who at the time of requesting counsel is unable, without undue financial hardship, to provide for full payment of legal counsel and all other necessary expenses for representation. A child is not to be considered ~~needy~~ indigent under this section if the child's parents or parent can, without undue financial hardship, provide full payment for legal counsel and other expenses of representation. Any parent entitled to the custody of a child involved in a proceeding under this chapter is, unless undue financial hardship would ensue, responsible for providing legal counsel and for paying other necessary expenses of representation for the parent's child. The court may enforce performance of this duty by appropriate order. As used in this subsection, the word "parent" includes adoptive parents.

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<sup>68</sup> Section 27-20-26 was also amended by section 14 of House Bill No. 1092, chapter 274.

**SECTION 13. AMENDMENT.** Subsections 2 and 3 of section 27-20-49 of the North Dakota Century Code are amended and reenacted as follows:

2. The commission on legal counsel for indigents shall pay reasonable compensation for services and related expenses of counsel ~~appointed by the court~~ provided at public expense for a party and the supreme court shall pay reasonable compensation for a guardian ad litem. The attorney general shall pay the witness fees, mileage, and travel expense of witnesses incurred in the proceedings under this chapter in the amount and at the rate provided for in section 31-01-16. Expenses of the state include the cost of any necessary transportation for medical and other examinations and treatment of a child ordered by the court if the child is in the legal custody of a state agency in which case the cost must be reimbursed to the county by that state agency at the state mileage rate, excluding meals and lodging, plus twenty-nine cents per mile.
3. If, after due notice to the parents or other persons legally obligated to care for and support the child, and after affording them an opportunity to be heard, the court finds that they are financially able to pay all or part of the costs and expenses stated in subsection 1, and expenses payable by the commission on legal counsel for indigents or the supreme court under subsection 2, the court may order them to pay the same and prescribe the manner of payment. Unless otherwise ordered, payment shall be made to the clerk of the juvenile court for remittance to the person to whom compensation is due, or if the costs and expenses have been paid by the county or the state to the county treasurer of the county or to the state treasurer.

**SECTION 14. AMENDMENT.** Section 27-22-02 of the North Dakota Century Code is amended and reenacted as follows:

**27-22-02. Execution of compact - Text.** The governor is hereby authorized and directed to execute a compact on behalf of this state with any other state or states legally joining therein in the form substantially as follows:

Article I - Findings and Purposes.

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals, and welfare, and the health, morals, and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to:

1. Cooperative supervision of delinquent juveniles on probation or parole;
2. The return, from one state to another, of delinquent juveniles who have escaped or absconded;
3. The return, from one state to another, of nondelinquent juveniles who have run away from home; and
4. Additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively.

In carrying out the provisions of this compact, the party states shall be guided by the noncriminal, reformative, and protective policies which guide their laws concerning delinquent, neglected, or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

#### Article II - Existing Rights and Remedies.

That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies, and procedures, and shall not be in derogation of parental rights and responsibilities.

#### Article III - Definitions.

That, for the purposes of this compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected, or dependent children; "state" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

#### Article IV - Return of Runaways.

1. That the parent, guardian, person, or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person, or agency may petition the appropriate court in the demanding state for the issuance of a requisition for the juvenile's return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of the juvenile's running away, the juvenile's location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering the juvenile's own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not the juvenile is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel the juvenile's return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, the judge shall present to the appropriate court or to the

executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person, or agency entitled to the juvenile's legal custody, and that it is in the best interest and for the protection of such juvenile that the juvenile be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected, or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person, or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing the peace officer or other appropriate person to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding the juvenile shall have appointed to receive the juvenile, unless the juvenile shall first be taken forthwith before a judge of a court in the state, who shall inform the juvenile of the demand made for the juvenile's return, and who may appoint ~~counsel or a~~ guardian ad litem for the juvenile or counsel may be provided at public expense. If the judge of such court shall find that the requisition is in order, the judge shall deliver such juvenile over to the officer whom the court demanding the juvenile shall have appointed to receive the juvenile. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding. Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person, or agency entitled to the juvenile's legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint ~~counsel or a~~ guardian ad litem for such juvenile or counsel may be provided at public expense, and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for the person's own protection and welfare, for such a time not exceeding ninety days as will enable the person's return to another state party to this compact pursuant to a requisition for the person's return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein the juvenile is found any criminal charge, or any proceeding to have the juvenile adjudicated a delinquent juvenile for an act committed in such state, or if the juvenile is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being

returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon the juvenile's return to the state from which the juvenile ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

2. That the state to which a juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.
3. That "juvenile" as used in this article means any person who is a minor under the law of the state of residence of the parent, guardian, person, or agency entitled to the legal custody of such minor.

#### Article V - Return of Escapees and Absconders.

1. That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody the juvenile has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of the juvenile's adjudication as a delinquent juvenile, the circumstances of the breach of the terms of the juvenile's probation or parole or of the juvenile's escape from an institution or agency vested with the juvenile's legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing the peace officer or other appropriate person to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding the juvenile shall have appointed to receive the juvenile, unless the juvenile shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform the juvenile of the demand made for the juvenile's return and who may appoint ~~counsel or~~ a guardian ad litem for the juvenile or counsel may be provided at public expense. If the judge of such court shall find that the requisition is in order, the judge shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding the juvenile shall have appointed to receive the juvenile. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with that person's legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, that person must be taken forthwith before a judge of the appropriate court, who may appoint ~~counsel or a guardian ad litem~~ for such person or counsel may be provided at public expense, and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding ninety days, as will enable the person's detention under a detention order issued on a requisition pursuant to this article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with the juvenile's legal custody or supervision, there is pending in the state wherein the juvenile is detained any criminal charge or any proceeding to have the juvenile adjudicated a delinquent juvenile for an act committed in such state, or if the juvenile is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon the juvenile's return to the state from which the juvenile escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

2. That the state to which a delinquent juvenile is returned under this article shall be responsible for the payment of the transportation costs of such return.

#### Article VI - Voluntary Return Procedure.

That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with the juvenile's legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of article IV, 1. or of article V, 1., may consent to the juvenile's immediate return to the state from which the juvenile absconded, escaped, or ran away. Such consent shall be given by the juvenile or delinquent juvenile and the juvenile's counsel or guardian ad litem if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and the juvenile's counsel or guardian ad litem, if any, consent to the juvenile's return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of the juvenile's rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver the juvenile to the duly accredited officer or officers of the state demanding the juvenile's return, and



shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order the juvenile to return unaccompanied to such state and shall provide the juvenile with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

#### Article VII - Cooperative Supervision of Probationers and Parolees.

1. That the duly constituted judicial and administrative authorities of a state party to this compact, herein called "sending state", may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact, herein called "receiving state", while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian, or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies, and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases when the parent, guardian, or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.
2. That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.
3. That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against the juvenile within the receiving state any criminal charge or any proceeding to have the juvenile adjudicated a delinquent juvenile for any act committed in such state or if the juvenile is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to

transport delinquent juveniles being so returned through any and all states party to this compact without interference.

4. That the sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

#### Article VIII - Responsibility for Costs.

1. That the provisions of articles IV, 2., V, 2., and VII, 4. of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.
2. That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to articles IV, 2., V, 2., or VII, 4. of this compact.

#### Article IX - Detention Practices.

That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail, or lockup nor be detained or transported in association with criminal, vicious, or dissolute persons.

#### Article X - Supplementary Agreements.

That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment, and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment, and rehabilitation. Such care, treatment, and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall:

1. Provide the rates to be paid for the care, treatment, and custody of such delinquent juveniles, taking into consideration the character of facilities, services, and subsistence furnished;
2. Provide that the delinquent juvenile shall be given a court hearing prior to the juvenile being sent to another state for care, treatment, and custody;
3. Provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;
4. Provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;
5. Provide for reasonable inspection of such institutions by the sending state;

6. Provide that the consent of the parent, guardian, person, or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to the juvenile being sent to another state; and
7. Make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

#### Article XI - Acceptance of Federal and Other Aid.

That any state party to this compact may accept any and all donations, gifts, and grants of money, equipment, and services from the federal or any local government, or any agency thereof and from any person, firm, or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions, and regulations governing such donations, gifts, and grants.

#### Article XII - Compact Administrators.

That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

#### Article XIII - Execution of Compact.

That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form or execution to be in accordance with the laws of the executing state.

#### Article XIV - Renunciation.

That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six months' renunciation notice of the present article.

#### Article XV - Severability.

That the provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstances shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

**SECTION 15. AMENDMENT.** Section 29-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**29-07-01.1. Payment of expenses for defense of indigents - Reimbursement of indigent defense costs and expenses - Indigent defense administration fund - Continuing appropriation.**

1. ~~Lawyers appointed provided~~ to represent indigent persons must be compensated at a reasonable rate to be determined by the commission on legal counsel for indigents. Expenses necessary for the adequate defense of an indigent person prosecuted in district court, when approved by the ~~judge~~ commission, must be paid by the state ~~if the action is prosecuted in district court and~~. Expenses necessary for the adequate defense of an indigent person prosecuted in municipal court, when approved by the judge, must be paid by the city in which the alleged offense took place if the action is prosecuted in municipal court. The city shall also pay the expenses in any appeal taken to district court from a judgment of conviction in municipal court pursuant to section 40-18-19. A defendant requesting representation by ~~appointed~~ counsel at public expense, or for whom ~~appointed~~ counsel provided at public expense without a request is considered appropriate by the court, shall submit an application for ~~appointed~~ appointed indigent defense services. For an application for ~~appointed~~ appointed indigent defense services in the district court, a nonrefundable application fee of twenty-five dollars must be paid at the time the application is submitted. The district court may extend the time for payment of the fee or may waive or reduce the fee if the court determines the defendant is financially unable to pay all or part of the fee. If the application fee is not paid before disposition of the case, the fee amount must be added to the amount to be reimbursed under this section. Application fees collected under this subsection must be forwarded for deposit in the indigent defense administration fund established under subsection 4.
2. A defendant ~~with appointed~~ for whom counsel is provided at public expense, subject to this subsection, shall reimburse the state or city such sums as the state or city expends on the defendant's behalf.
  - a. At the time counsel is ~~appointed~~ provided for a defendant, the ~~appointing~~ court shall advise the defendant of the defendant's potential obligation to reimburse the appropriate governmental entity the amounts expended on behalf of the defendant.
  - b. Within ninety days after its judgment of conviction or after conclusion of an appeal of its initial judgment of conviction, the court ~~that appointed counsel for the defendant~~ shall notify the defendant and the prosecuting attorney of the amount of indigent defense costs and expenses, as determined by the commission, the defendant is obligated to reimburse if able to do so and of the defendant's right to a hearing on the reimbursement amount. It is a rebuttable presumption that reasonable reimbursement of costs and expenses consists of seventy-five dollars per hour for ~~appointed~~ counsel services plus reasonable expenses. If the defendant requests a hearing within thirty days of receiving notice under this subdivision, the court shall schedule a hearing at which the basis for the amount to be reimbursed must be demonstrated. In determining the amount of reimbursement and method of

payment, the court shall consider the financial resources of the defendant and the nature of the burden that reimbursement of costs and expenses will impose.

- c. A defendant who is required to reimburse indigent defense costs and expenses and who is not willfully in default in that reimbursement may at any time petition the court to waive reimbursement of all or any portion of the costs and expenses. If the court is satisfied that reimbursement of the amount due will impose undue hardship on the defendant or the defendant's immediate family, the court may waive reimbursement of all or any portion of the amount due or modify the method of payment.
3. The state's attorney of the county or prosecuting attorney of the city in which the alleged offense took place, if reimbursement has not been received, shall seek civil recovery of any amounts expended on the defendant's behalf anytime the state's attorney or city attorney determines the person for whom counsel was appointed may have funds to repay the state or city within six years of the date such amount was paid on that person's behalf. A person against whom civil recovery is sought under this subsection is entitled to all exemptions accorded to other judgment debtors. The state's attorney may contract with a private sector collection agency for assistance in seeking recovery of such funds. Before referring the matter to a collection agency, the state's attorney shall notify the person who is the subject of the collection action.
4. The indigent defense administration fund is a special fund in the state treasury. The state treasurer shall deposit in the fund all application fees collected under subsection 1. All moneys in the indigent defense administration fund are appropriated on a continuing basis to the commission on legal counsel for indigents to be used in the administration of the indigent defense system.

**SECTION 16. AMENDMENT.** Section 29-32.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**29-32.1-05. ~~Appointment of counsel~~ Counsel at public expense - 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 indigent counsel provided at public expense to represent the applicant.
2. Costs and expenses incident to a proceeding under this chapter, including fees for ~~appointed counsel~~ provided at public expense, must be reimbursed in the same manner as are costs and expenses incurred in the defense of criminal prosecutions.

**SECTION 17. AMENDMENT.** Section 31-01-16 of the North Dakota Century Code is amended and reenacted as follows:

**31-01-16. Compensation and mileage and travel expense of witness.** A witness in a civil or criminal case is entitled to receive:

1. A sum of twenty-five dollars for each day necessarily in attendance before the district court or before any other board or tribunal, except municipal court.
2. A sum for mileage and travel expense reimbursement equal to the reimbursement rates provided for state employees in sections 44-08-04 and 54-06-09.

In all criminal cases in district court, the attorney general shall pay prosecution witness fees and expenses; and the ~~supreme court shall pay other witness fees for indigents and expenses~~ commission on legal counsel for indigents shall pay witness fees and expenses for witnesses in those cases in which counsel has been provided by the commission. Prisoners may not be compensated as witnesses under this section.

Approved March 5, 2007  
Filed March 6, 2007

**CHAPTER 120****HOUSE BILL NO. 1319**

(Representatives Porter, Carlisle, Klemin, S. Meyer)  
(Senators Holmberg, Potter)

**DEADLY FORCE USE AND LIABILITY**

AN ACT to create and enact two new sections to chapter 12.1-05 of the North Dakota Century Code, relating to the use of and liability for deadly force; and to amend and reenact section 12.1-05-07 of the North Dakota Century Code, relating to the use of deadly force.

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

**SECTION 1. AMENDMENT.** Section 12.1-05-07 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-05-07. Limits on the use of force - Excessive force - Deadly force.**

1. A ~~person~~ An individual is not justified in using more force than is necessary and appropriate under the circumstances.
2. Deadly force is justified in the following instances:
  - a. When it is expressly authorized by law or occurs in the lawful conduct of war.
  - b. When used in lawful self-defense, or in lawful defense of others, if such force is necessary to protect the actor or anyone else against death, serious bodily injury, or the commission of a felony involving violence. The use of deadly force is not justified if it can be avoided, with safety to the actor and others, by retreat or other conduct involving minimal interference with the freedom of the ~~person~~ individual menaced. A ~~person~~ An individual seeking to protect ~~someone else~~ another individual must, before using deadly force, try to cause ~~that person~~ the other individual to retreat, or otherwise comply with the requirements of this provision, if safety can be obtained thereby. ~~But, (1) a~~ However, the duty to retreat or avoid force does not apply under the following circumstances:
    - (1) A public servant justified in using force in the performance of his the public servant's duties or a person an individual justified in using force in his assistance assisting the public servant need not desist from his the public servant's or individual's efforts because of resistance or threatened resistance by or on behalf of the person other individual against whom his the public servant's or individual's action is directed; and (2) no person
    - (2) An individual is not required to retreat within or from his that individual's dwelling or place of work or from an occupied motor home or travel trailer as defined in section 39-01-01, unless he the individual was the original aggressor or is

assailed by a ~~person~~ another individual who ~~he~~ the individual knows also dwells or works there or who is lawfully in the motor home or travel trailer.

- c. When used by a ~~person~~ an individual in possession or control of a dwelling ~~or,~~ place of work, or a ~~person~~ an occupied motor home or travel trailer as defined in section 39-01-01, or by an individual who is licensed or privileged to be there, if ~~such~~ the force is necessary to prevent commission of arson, burglary, robbery, or a felony involving violence upon or in the dwelling ~~or,~~ place of work, or occupied motor home or travel trailer, and the use of force other than deadly force for ~~such~~ these purposes would expose ~~anyone~~ any individual to substantial danger of serious bodily injury.
- d. When used by a public servant authorized to effect arrests or prevent escapes, if ~~such~~ the force is necessary to effect an arrest or to prevent the escape from custody of a ~~person~~ an individual who has committed or attempted to commit a felony involving violence, or is attempting to escape by the use of a deadly weapon, or has otherwise indicated that ~~he~~ the individual is likely to endanger human life or to inflict serious bodily injury unless apprehended without delay.
- e. When used by a guard or other public servant, if ~~such~~ the force is necessary to prevent the escape of a prisoner from a detention facility, unless ~~he~~ the guard or public servant knows that the prisoner is not ~~such a person~~ an individual as described in subdivision d. A detention facility is any place used for the confinement, pursuant to a court order, of a ~~person~~ (1) an individual charged with or convicted of an offense; ~~or~~ (2), charged with being or adjudicated a juvenile delinquent; ~~or~~ (3), held for extradition; or (4) otherwise confined ~~pursuant to~~ under court order.
- f. When used by a duly licensed physician, or a ~~person~~ an individual acting at ~~his~~ the physician's direction, if ~~such~~ the force is necessary to administer a recognized form of treatment to promote the physical or mental health of a patient and if the treatment is administered (1) in an emergency; (2) with the consent of the patient, or, if the patient is a minor or an incompetent person, with the consent of ~~his~~ the patient's parent, guardian, or other person entrusted with ~~his~~ the patient's care and supervision; or (3) by order of a court of competent jurisdiction.
- g. When used by a ~~person~~ an individual who is directed or authorized by a public servant, and who does not know that; if ~~such is the case,~~ the public servant is ~~himself~~ not authorized to use deadly force under the circumstances.

**SECTION 2.** A new section to chapter 12.1-05 of the North Dakota Century Code is created and enacted as follows:



**Use of deadly force - Presumption of fear of death or serious bodily injury.**

1. An individual is presumed to have held a reasonable fear of imminent peril of death or serious bodily injury to that individual or another when using deadly force if:
  - a. The individual against whom the deadly force was used was in the process of unlawfully and forcibly entering, or had unlawfully and forcibly entered and remains within a dwelling, place of work, or occupied motor home or travel trailer as defined in section 39-01-01, or if the individual had removed or was attempting to remove another against that individual's will from the dwelling, place of work, or occupied motor home or travel trailer as defined in section 39-01-01; and
  - b. The individual who uses deadly force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.
2. The presumption in subsection 1 may be rebutted by proof beyond a reasonable doubt that the individual who used the deadly force did not have a reasonable fear of imminent peril of death or serious bodily injury to that individual or another.
3. The presumption in subsection 1 does not apply if the court finds that any of the following have occurred:
  - a. The individual against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, place of work, or occupied motor home or travel trailer as defined in section 39-01-01, including an owner, lessee, or titleholder, and there is not a temporary or permanent domestic violence protection order or any other order of no contact against that individual;
  - b. The individual removed or sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the individual against whom the deadly force is used;
  - c. The individual who uses deadly force is engaged in the commission of a crime or is using the dwelling, place of work, or occupied motor home or travel trailer as defined in section 39-01-01 to further the commission of a crime; or
  - d. The individual against whom the deadly force is used is a law enforcement officer who enters or attempts to enter a dwelling, place of work, or occupied motor home or travel trailer as defined in section 39-01-01 in the performance of official duties and the officer provided identification, if required, in accordance with any applicable law or warrant from a court, or if the individual using force knew or reasonably should have known that the individual entering or attempting to enter was a law enforcement officer.

**SECTION 3.** A new section to chapter 12.1-05 of the North Dakota Century Code is created and enacted as follows:

**Immunity from civil liability for justifiable use of force.**

1. An individual who uses force as permitted under this chapter is immune from civil liability for the use of the force to the individual against whom force was used or to that individual's estate unless that individual is a law enforcement officer who was acting in the performance of official duties and the officer provided identification, if required, in accordance with any applicable law or warrant from a court, or if the individual using force knew or reasonably should have known that the individual was a law enforcement officer.
2. The court shall award reasonable attorney's fees and court costs and disbursements incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from civil liability as provided in subsection 1.

Approved April 24, 2007  
Filed April 25, 2007

**CHAPTER 121****SENATE BILL NO. 2262**

(Senators Hacker, Potter, Wanzek)  
(Representatives DeKrey, Delmore, S. Kelsh)

**CRIMINAL INTENT RENUNCIATION**

AN ACT to amend and reenact section 12.1-06-05 of the North Dakota Century Code, relating to the renunciation of criminal intent; and to declare an emergency.

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

<sup>69</sup> **SECTION 1. AMENDMENT.** Section 12.1-06-05 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-06-05. General provisions.**

1. The definition of an offense in sections 12.1-06-01 to 12.1-06-04 ~~shall~~ does not apply to another offense also defined in sections 12.1-06-01 to 12.1-06-04.
2. Whenever "attempt" or "conspiracy" is made an offense outside this chapter, it ~~shall mean~~ means attempt or conspiracy, as the case may be, as defined in this chapter.
3.
  - a. ~~It~~ Other than as provided in subsection 4, in a prosecution under section 12.1-06-01, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of ~~his~~ criminal intent, the defendant avoided the commission of the crime attempted by abandoning ~~his~~ any criminal effort and, if mere abandonment was insufficient to accomplish such avoidance, by taking further and affirmative steps which prevented the commission thereof.
  - b. ~~It~~ Other than as provided in subsection 4, in a prosecution under section 12.1-06-03 or 12.1-06-04, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of ~~his~~ criminal intent, the defendant prevented the commission of the crime solicited or of the crime or crimes contemplated by the conspiracy.
  - c. A renunciation is not "voluntary and complete" within the meaning of this section if it is motivated in whole or in part by (1) a belief that a circumstance exists which increases the probability of detection or apprehension of the defendant or another participant in the criminal operation, or which makes more difficult the

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<sup>69</sup> Section 12.1-06-05 was also amended by section 1 of Senate Bill No. 2030, chapter 162.

consummation of the crime, or (2) a decision to postpone the criminal conduct until another time or to substitute another victim, or another but similar objective.

4. An individual under the age of twenty-one is immune from prosecution under this chapter if:
- a. The individual voluntarily and completely renounced the individual's criminal intent;
  - b. The individual is a student enrolled in an elementary school, middle school, or a high school in this state;
  - c. The offense would have resulted in:
    - (1) Harm to another student enrolled in an elementary school, middle school, or a high school in this state;
    - (2) Harm to an employee of a school district or a nonpublic school in this state; or
    - (3) Damage to a school building or school property; and
  - d. The renunciation was given to a law enforcement officer or to an administrator of a school or school district in this state before any harm to others or damage to property occurs.

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

Approved April 30, 2007  
Filed May 1, 2007

**CHAPTER 122****SENATE BILL NO. 2415**

(Senators Christmann, Dever, Heitkamp)  
(Representatives Grande, Wald)

**IMPLANTED MICROCHIPS PROHIBITED**

AN ACT to create and enact a new section to chapter 12.1-15 of the North Dakota Century Code, relating to implanted microchips in individuals; and to provide a penalty.

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

**SECTION 1.** A new section to chapter 12.1-15 of the North Dakota Century Code is created and enacted as follows:

**Implanting microchips prohibited.** A person may not require that an individual have inserted into that individual's body a microchip containing a radio frequency identification device. A violation of this section is a class A misdemeanor.

Approved April 4, 2007  
Filed April 5, 2007

**CHAPTER 123****HOUSE BILL NO. 1216**

(Representatives DeKrey, Delmore, Koppelman)  
(Senators Hacker, Lyson, Nelson)

**SEXUAL OFFENDER SENTENCING AND PROBATION**

AN ACT to amend and reenact subsection 3 of section 12.1-20-01, section 12.1-20-03, subsection 1 of section 12.1-20-03.1, and sections 12.1-32-06.1 and 12.1-32-07.1 of the North Dakota Century Code, relating to sentencing and probation supervision of sexual offenders; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 12.1-20-01 of the North Dakota Century Code is amended and reenacted as follows:

3. When criminality depends on the victim being a minor fifteen years of age or older, the actor is guilty of an offense only if the actor is at least ~~four~~ three years older than the minor.

**SECTION 2. AMENDMENT.** Section 12.1-20-03 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-20-03. Gross sexual imposition - Penalty.**

1. A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of an offense if:
  - a. That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being;
  - b. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means with intent to prevent resistance;
  - c. That person knows that the victim is unaware that a sexual act is being committed upon him or her;
  - d. The victim is less than fifteen years old; or
  - e. That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders him or her incapable of understanding the nature of his or her conduct.
2. A person who engages in sexual contact with another, or who causes another to engage in sexual contact, is guilty of an offense if:
  - a. The victim is less than fifteen years old; ~~or~~

- b. That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being;or
  - c. That person knows that the victim is unaware that sexual contact is being committed on the victim.
3. a. An offense under this section is a class AA felony if in the course of the offense the actor inflicts serious bodily injury upon the victim, if the actor's conduct violates subdivision a of subsection 1, or if the actor's conduct violates subdivision d of subsection 1 and the actor was ~~more than five years older than the victim~~ at least twenty-two years of age at the time of the offense. For any conviction of a class AA felony under subdivision a of subsection 1, the court shall impose a minimum sentence of twenty years' imprisonment, with probation supervision to follow the incarceration. The court may deviate from the mandatory sentence if the court finds that the sentence would impose a manifest injustice as defined in section 39-01-01 and the defendant has accepted responsibility for the crime or cooperated with law enforcement. However, a defendant convicted of a AA felony under this section may not be sentenced to serve less than five years of incarceration.
  - b. ~~An offense under this section is a class C felony if the actor's conduct violates subdivision d of subsection 4 or subdivision a of subsection 2, and the actor was at least four but not more than five years older than the victim at the time of the offense.~~
  - e. Otherwise the offense is a class A felony.
4. If, as a result of injuries sustained during the course of an offense under this section, the victim dies, the offense is a class AA felony, for which the maximum penalty of life imprisonment without parole must be imposed.

**SECTION 3. AMENDMENT.** Subsection 1 of section 12.1-20-03.1 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual in adult court is guilty of an offense if the individual engages in any combination of three or more sexual acts or sexual contacts with a minor under the age of fifteen years during a period of three or more months. The offense is a class AA felony if the actor was ~~more than five years older than the victim at the time of the offense. The offense is a class C felony if the actor was at least four but not more than five years older than the victim~~ at least twenty-two years of age at the time of the offense. Otherwise, the offense is a class A felony. The court may not defer imposition of sentence.

**SECTION 4. AMENDMENT.** Section 12.1-32-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-32-06.1. Length and termination of probation - Additional probation for violation of conditions - Penalty.**

1. Except as provided in this section, the length of the period of probation imposed in conjunction with a sentence to probation or a suspended

execution or deferred imposition of sentence may not extend for more than five years for a felony and two years for a misdemeanor or infraction from the later of the date of:

- a. The order imposing probation;
  - b. The defendant's release from incarceration; or
  - c. Termination of the defendant's parole.
2. If the defendant has pled or been found guilty of an offense for which the court imposes a sentence of restitution or reparation for damages resulting from the commission of the offense, the court may, following a restitution hearing pursuant to section 12.1-32-08, impose an additional period of probation not to exceed five years.
  3. If the defendant has pled or been found guilty of a felony sexual offense in violation of chapter 12.1-20, the court shall impose a ~~period at least five years but not more than ten years~~ of supervised probation ~~of five years~~ to be served after sentencing or incarceration. ~~The court may impose an additional period of supervised probation not to exceed five years.~~ If the defendant has pled or been found guilty of a class AA felony sexual offense in violation of section 12.1-20-03 or 12.1-20-03.1, the court may impose lifetime supervised probation on the defendant. If the defendant has pled or been found guilty of a misdemeanor sexual offense in violation of chapter 12.1-20, the court may impose an additional period of probation not to exceed two years. If the unserved portion of the defendant's maximum period of incarceration is less than one year, a violation of the probation imposed under this subsection is a class A misdemeanor.
  4. If the defendant has pled or been found guilty of abandonment or nonsupport of spouse or children, the period of probation may be continued for as long as responsibility for support continues.
  5. In felony cases, in consequence of violation of probation conditions, the court may impose an additional period of probation not to exceed five years. The additional period of probation may follow a period of incarceration if the defendant has not served the maximum period of incarceration available at the time of initial sentencing or deferment.
  6. The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection 1 if warranted by the conduct of the defendant and the ends of justice.
  7. Notwithstanding the fact that a sentence to probation subsequently can be modified or revoked, a judgment that includes such a sentence constitutes a final judgment for all other purposes.

**SECTION 5. AMENDMENT.** Section 12.1-32-07.1 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-32-07.1. Release, discharge, or termination of probation.**

1. Whenever a person has been placed on probation and in the judgment of the court that person has satisfactorily met the conditions of



probation, the court shall cause to be issued to the person a final discharge from further supervision.

2. Whenever a person has been placed on probation pursuant to subsection 4 of section 12.1-32-02, the court at any time, when the ends of justice will be served, and when reformation of the probationer warrants, may terminate the period of probation and discharge the person so held. A person convicted of gross sexual imposition under subdivision a of subsection 1 of section 12.1-20-03 is not entitled to early termination of probation pursuant to this section, unless the court finds after at least eight years of supervised probation that further supervision would impose a manifest injustice as defined in section 39-01-01. Every defendant who has fulfilled the conditions of probation for the entire period, or who has been discharged from probation prior to termination of the probation period, may at any time be permitted in the discretion of the court to withdraw the defendant's plea of guilty. The court may in its discretion set aside the verdict of guilty. In either case, the court may dismiss the information or indictment against the defendant. The court may, upon its own motion or upon application by the defendant and before dismissing the information or indictment, reduce to a misdemeanor a felony conviction for which the plea of guilty has been withdrawn or set aside. The defendant must then be released from all penalties and disabilities resulting from the offense or crime of which the defendant has been convicted except as provided by ~~section~~ sections 12.1-32-15 and 62.1-02-01.

Approved April 3, 2007

Filed April 4, 2007

**CHAPTER 124****HOUSE BILL NO. 1472**

(Representatives Clark, Berg, Dietrich, Thoreson)  
(Senators Flakoll, Nelson)

**SEXUAL OFFENDERS NEAR SCHOOLS PROHIBITED**

AN ACT to create and enact a new section to chapter 12.1-20, a new subsection to section 12.1-20-05, and a new subsection to section 12.1-20-12.1 of the North Dakota Century Code, relating to the presence near schools of certain sexual offenders; to amend and reenact subsection 14 of section 12.1-32-15 of the North Dakota Century Code, relating to liability of school officials; and to provide a penalty.

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

<sup>70</sup> **SECTION 1.** A new section to chapter 12.1-20 of the North Dakota Century Code is created and enacted as follows:

**Sexual offender presence near schools prohibited.**

1. Except for purposes of voting in a school building used as a public polling place or attending an open meeting under chapter 44-04 in a school building, a sexual offender, as defined in section 12.1-32-15, who has pled guilty or been found guilty of or has been adjudicated delinquent of a class A misdemeanor or felony sexual offense against a minor or is required to register under section 12.1-32-15 or equivalent law of another state may not knowingly enter upon the real property comprising a public or nonpublic elementary, middle, or high school unless allowed on school property through compliance with a written policy adopted by the school board of a public school or governing body of a nonpublic school.
2. An individual who violates this section is guilty of a class A misdemeanor.

**SECTION 2.** A new subsection to section 12.1-20-05 of the North Dakota Century Code is created and enacted as follows:

An adult who commits a violation of subsection 1 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class C felony. An adult who commits a violation of subsection 2 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class B felony.

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<sup>70</sup> Section 12.1-20-25 was amended by section 1 of Senate Bill No. 2256, chapter 126.

**SECTION 3.** A new subsection to section 12.1-20-12.1 of the North Dakota Century Code is created and enacted as follows:

A person who commits a violation of subsection 1 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class C felony. A person who commits a violation of subsection 2 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class B felony.

<sup>71</sup> **SECTION 4. AMENDMENT.** Subsection 14 of section 12.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

14. A state officer, law enforcement agency, or public school district or governing body of a nonpublic school or any appointee, officer, or employee of those entities is not subject to civil or criminal liability for making risk determinations, allowing a sexual offender to attend a school function under section 1 of this Act, or for disclosing or for failing to disclose information as permitted by this section.

Approved April 23, 2007

Filed April 24, 2007

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<sup>71</sup> Section 12.1-32-15 was also amended by section 1 of Senate Bill No. 2259, chapter 136.

## CHAPTER 125

### SENATE BILL NO. 2248

(Senators Hacker, Nelson, Stenehjem)  
(Representatives Dahl, Delmore, L. Meier)

### LURING MINORS BY ELECTRONIC MEANS

AN ACT to amend and reenact sections 12.1-20-05.1, 29-03-01.1, and 29-03-09 of the North Dakota Century Code, relating to the luring of a minor by electronic means, persons liable for prosecution in this state, and the venue of certain offenses; to provide a penalty; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 12.1-20-05.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **12.1-20-05.1. Luring minors by computer or other electronic means.**

1. An adult is guilty of luring minors by computer or other electronic means when:
  - ~~4-~~ a. The adult knows the character and content of a communication that, in whole or in part, implicitly or explicitly discusses or depicts actual or simulated nudity, sexual acts, sexual contact, sadomasochistic abuse, or other sexual performances and uses any computer communication system or other electronic means that allows the input, output, examination, or transfer of ~~computer~~ data or ~~computer~~ programs from one computer or electronic device to another to initiate or engage in such communication with a person the adult believes to be a minor; and
  - ~~2-~~ b. By means of that communication the adult importunes, invites, or induces a person the adult believes to be a minor to engage in sexual acts or to have sexual contact with the adult, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for the adult's benefit, satisfaction, lust, passions, or sexual desires.
- ~~3-~~ 2. A violation of this section is a class A misdemeanor, ~~but~~ if the adult is less than twenty-two years of age and reasonably believes the minor is age fifteen to seventeen. If the adult is less than twenty-two years of age and reasonably believes the minor is under age fifteen, or the adult is twenty-two years of age or older ~~or~~ and the adult reasonably believes the minor is under the age of fifteen to seventeen, violation of this section is a class C felony. If the adult is twenty-two years of age or older and the adult reasonably believes the minor is under the age of fifteen, violation of this section is a class B felony. The court shall sentence an adult convicted of a class B or class C felony under this section to serve a term of imprisonment of at least one year, except the court may sentence an individual to less than one year if the individual did not take a substantial step toward meeting with the minor.

3. The attorney general may issue an administrative subpoena compelling an internet service provider or cellular phone company to provide subscriber information to a law enforcement agency investigating a possible violation of this section.

**SECTION 2. AMENDMENT.** Section 29-03-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**29-03-01.1. When persons liable to prosecution in this state.** Any person who commits one or more of the following acts ~~and is thereafter found in this state~~ is liable to prosecution under the laws of this state:

1. Commission of a robbery or theft outside this state and bringing the stolen property into this state.
2. Soliciting, while outside this state, criminal action within this state.
3. Soliciting, while outside this state, sexual contact with a person believed to be a minor who at the time of the solicitation is located in this state.
4. Commission of kidnapping or felonious restraint when the victim is brought into this state.

**SECTION 3. AMENDMENT.** Section 29-03-09 of the North Dakota Century Code is amended and reenacted as follows:

**29-03-09. Venue of kidnapping, forcible restraint, unlawful imprisonment, electronic luring, or prostitution cases.** The venue of a criminal action for any of the following offenses is in any county in which the offense is committed, or into or out of which the individual upon whom the offense was committed may have been brought, in the course of the commission of the offense, or in which an act was done by the accused in instigating, procuring, promoting, soliciting, or facilitating the commission of the offense:

1. ~~For kidnapping~~ Kidnapping, forcible restraint, or unlawful imprisonment, in violation of chapter 12.1-18; ~~or~~
2. ~~For~~ A violation of section 12.1-29-01, 12.1-29-02, or 12.1-29-03 relating to prostitution;

~~is in any county in which the offense is committed, or into or out of which the person upon whom the offense was committed may have been brought, in the course of the commission of the offense, or in which an act was done by the accused in instigating, procuring, promoting, soliciting, or facilitating the commission of the offense; or~~

3. Luring a minor by computer or other electronic means in violation of section 12.1-20-05.1.

**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 9, 2007  
Filed April 10, 2007

**CHAPTER 126****SENATE BILL NO. 2256**  
(Senators Fiebiger, Mathern, Nething)  
(Representatives Schneider, Zaiser)**SEXUAL OFFENDERS ON SCHOOL PROPERTY**

AN ACT to amend and reenact the new section to chapter 12.1-20 of the North Dakota Century Code as created by section 1 of House Bill No. 1472, as approved by the sixtieth legislative assembly, relating to sexual offenders on school property.

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

<sup>72</sup> **SECTION 1.** The new section to chapter 12.1-20 of the North Dakota Century Code as created by section 1 of House Bill No. 1472, as approved by the sixtieth legislative assembly, is amended and reenacted as follows:

**Sexual offender presence near schools prohibited.**

1. Except for purposes of voting in a school building used as a public polling place or attending an open meeting under chapter 44-04 in a school building, a sexual offender, as defined in section 12.1-32-15, who has pled guilty or been found guilty of or has been adjudicated delinquent of a class A misdemeanor or felony sexual offense against a minor or is required to register under section 12.1-32-15 or equivalent law of another state may not knowingly enter upon the real property comprising a public or nonpublic elementary, middle, or high school unless provided by this section or allowed on school property through compliance with a written policy adopted by the school board of a public school or governing body of a nonpublic school. The school board or governing body shall provide a copy of the policy to local law enforcement upon request.
2. If a school board or a governing body does not have a written policy on sexual offenders on school property, subsection 1 does not apply under the following circumstances:
  - a. The offender is a parent or guardian of a student attending the school and the offender, with the written permission of the school board or governing body of the school, or designee of the board or body, is attending a conference at the school with school personnel to discuss the progress of the student academically or socially, participating in a child review conference in which evaluation and placement decisions may be made regarding special education services, or attending a conference to discuss other student issues, including retention and promotion.

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<sup>72</sup> Section 12.1-20-25 was created by section 1 of House Bill No. 1472, chapter 124.

- b. The offender is a parent, guardian, or relative of a student attending or participating in a function at the school and the offender has requested advance permission from the school board or governing body, or designee of the board or body, and received permission allowing the offender's presence at the school function.
  - c. The offender is a student at the school with the written permission of the school board or governing body, or designee of the board or body.
  - d. The school board or governing body, or designee of the board or body, allows the offender on school property under other circumstances on a case-by-case basis.
3. An individual who violates this section is guilty of a class A misdemeanor.

Approved April 26, 2007  
Filed April 27, 2007

**CHAPTER 127****HOUSE BILL NO. 1500**

(Representatives Dosch, L. Meier, Porter, Weiler)  
(Senator Hacker)

**CRIMINAL TRESPASS**

AN ACT to amend and reenact section 12.1-22-03 of the North Dakota Century Code, relating to criminal trespass.

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

**SECTION 1. AMENDMENT.** Section 12.1-22-03 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-22-03. Criminal trespass.**

1. A ~~person~~ An individual is guilty of a class C felony if, knowing that ~~he~~ that individual is not licensed or privileged to do so, ~~he~~ the individual enters or remains in a dwelling or in highly secured premises.
2. A ~~person~~ An individual is guilty of a class A misdemeanor if, knowing that ~~he~~ that individual is not licensed or privileged to do so, ~~he~~ the individual:
  - a. Enters or remains in or on any building, occupied structure, or storage structure, or separately secured or occupied portion thereof; or
  - b. Enters or remains in any place so enclosed as manifestly to exclude intruders.
3. A ~~person~~ An individual is guilty of a class B misdemeanor if, knowing that that ~~person~~ individual is not licensed or privileged to do so, ~~that person~~ the individual enters or remains in any place as to which notice against trespass is given by actual communication to the actor by the ~~person~~ individual in charge of the premises or other authorized ~~person~~ individual or by posting in a manner reasonably likely to come to the attention of intruders. The name of the person posting the premises must appear on each sign in legible characters. A ~~person~~ An individual who violates this subsection is guilty of a class A misdemeanor for the second or subsequent offense within a two-year period.
4. A ~~person~~ An individual is guilty of a class B misdemeanor if that ~~person~~ individual remains upon the property of another after being requested to leave the property by a duly authorized ~~person~~ individual. A ~~person~~ An individual who violates this subsection is guilty of a class A misdemeanor for the second or subsequent offense within a two-year period.



5. This section does not apply to a peace officer in the course of discharging the peace officer's official duties.

Approved March 9, 2007  
Filed March 12, 2007

**CHAPTER 128****HOUSE BILL NO. 1357**

(Representatives Dahl, Heller, Owens)

(Senators Freborg, Hacker, J. Lee)

**SEXUAL CONDUCT BY MINOR MATERIAL  
POSSESSION**

AN ACT to amend and reenact section 12.1-27.2-04.1 of the North Dakota Century Code, relating to the penalty for possession of materials that include sexual conduct by a minor; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 12.1-27.2-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-27.2-04.1. Possession of certain materials prohibited.** A person is guilty of a class A misdemeanor ~~following a first offense or a class C felony following a second or subsequent offense~~ if, knowing of its character and content, that person knowingly possesses any motion picture, photograph, or other visual representation that includes sexual conduct by a minor.

Approved March 21, 2007

Filed March 21, 2007

**CHAPTER 129****HOUSE BILL NO. 1040**

(Representatives Grande, DeKrey, Klein, Metcalf)  
(Senators Dever, Lyson)

**FUNERAL DISORDERLY CONDUCT**

AN ACT to create and enact a new section to chapter 12.1-31 of the North Dakota Century Code, relating to disorderly conduct at a funeral; to provide a penalty; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 12.1-31 of the North Dakota Century Code is created and enacted as follows:

**Disorderly conduct at a funeral - Penalty.**

1. For purposes of this section:
  - a. "Funeral" means the ceremonies, rituals, processions, and memorial services held at a funeral site in connection with the burial, cremation, or memorial of a deceased individual.
  - b. "Funeral site" means a church, synagogue, mosque, funeral home, mortuary, cemetery, gravesite, mausoleum, or other place at which a funeral is conducted or is scheduled to be conducted within the next hour or has been conducted within the last hour.
2. An individual is guilty of disorderly conduct at a funeral if the individual:
  - a. Engages, with knowledge of the existence of a funeral site, in any loud singing, playing of music, chanting, whistling, yelling, or noisemaking within three hundred feet [91.44 meters] of any ingress or egress of that funeral site if the volume of the singing, music, chanting, whistling, yelling, or noisemaking is likely to be audible at and disturbing to the funeral site; or
  - b. Displays, with knowledge of the existence of a funeral site and within three hundred feet [91.44 meters] of any ingress or egress of that funeral site, any visual images that convey fighting words or actual or veiled threats against any other individual.
3. Disorderly conduct at a funeral is a class B misdemeanor. A second or subsequent violation of this section is a class A misdemeanor.

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

Approved January 25, 2007  
Filed January 25, 2007

**CHAPTER 130****HOUSE BILL NO. 1358**

(Representatives Carlson, Delmore, Weiler)

(Senators Nething, O'Connell, Tollefson)

**TOBACCO SALES AND USE BY MINORS**

AN ACT to create and enact section 12.1-31-03.1 of the North Dakota Century Code, relating to limitation of sales of cigarettes or other tobacco products through vending machines; to amend and reenact section 12.1-31-03 of the North Dakota Century Code, relating to sales to and use by minors of tobacco products; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 12.1-31-03 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-31-03. Sale of tobacco to minors and use by minors prohibited.**

1. It is an infraction for any person to sell or furnish to a minor, or procure for a minor, cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. As used in this subsection, "sell" includes dispensing from a vending machine under the control of the actor.
2. It is a noncriminal offense for a minor to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. However, an individual under eighteen years of age may purchase and possess tobacco as part of a compliance survey program when acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco retailer, or association of tobacco retailers may also conduct compliance surveys, after coordination with the appropriate local law enforcement authority.
3. It is a noncriminal offense for a minor to present or offer to another individual a purported proof of age which is false, fraudulent, or not actually the minor's own proof of age, for the purpose of attempting to purchase or possess cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing.
4. A city or county may adopt an ordinance or resolution regarding the sale of tobacco to minors and use of tobacco by minors which includes prohibitions in addition to those in subsection 1, ~~2~~, or ~~2~~ 3. Any ordinance or resolution adopted must include provisions deeming a violation of subsection 2 or 3 a noncriminal violation and must provide for a fee of not less than twenty-five dollars for a minor fourteen years of age or older who has been charged with an offense under subsection 2 or 3. The failure to post a required bond or pay an assessed fee by an individual found to have violated the ordinance or resolution is

punishable as a contempt of court, except a minor may not be imprisoned for the contempt.

- ~~4.~~ 5. A minor fourteen years of age or older found to have violated subsection 2 or 3 must pay a fee of twenty-five dollars.
- a. Any individual who has been cited for a violation of subsection 2 or 3 may appear before a court of competent jurisdiction and pay the fee by the time scheduled for a hearing, or if bond has been posted, may forfeit the bond by not appearing at the scheduled time. An individual appearing at the time scheduled in the citation may make a statement in explanation of that individual's action and the judge may waive, reduce, or suspend the fee or bond, or both. If the individual cited follows the procedures of this subdivision, that individual 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 court must be identical to the fee. This subdivision does not allow a citing officer to receive the fee or bond.
  - b. If an individual cited for a violation of subsection 2 or 3 does not choose to follow the procedures provided under subdivision a, that individual may request a hearing on the issue of the commission of the violation cited. 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. At the time of a request for a hearing on the issue on commission of the violation, the individual cited shall deposit with the court an appearance bond equal to the fee for the violation cited.
  - c. The failure to post bond or to pay an assessed fee is punishable as a contempt of court, except a minor may not be imprisoned for the contempt.
- ~~5.~~ 6. The prosecution must prove the commission of a cited violation under subsection 2 or 3 by a preponderance of the evidence.
- ~~6.~~ 7. A law enforcement officer that cites a minor for violation of this section shall mail a notice of the violation to the parent or legal guardian of the minor within ten days of the citation.
- ~~7.~~ 8. A person adjudged guilty of contempt for failure to pay a fee or fine may be sentenced by the court to a sanction or order designed to ensure compliance with the payment of the fee or fine or to an alternative sentence or sanction including community service.

**SECTION 2.** Section 12.1-31-03.1 of the North Dakota Century Code is created and enacted as follows:

**12.1-31-03.1. Vending machines prohibited - Penalty.**

1. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing through a vending machine, except as provided in subsection 2.

2. Subsection 1 does not apply to:

- a. A vending machine that is located in an area in which minors are not permitted access; or
- b. A vending machine that dispenses cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing through the operation of a device that requires a salesperson to control the dispensation of such product.

3. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing through any vending machine, if those products are placed together with any nontobacco product, other than matches, in the vending machine.

Approved March 21, 2007  
Filed March 21, 2007

**CHAPTER 131****SENATE BILL NO. 2138**

(Senators Potter, Hacker, Nelson)  
(Representatives Delmore, Ekstrom, N. Johnson)

**UNLAWFUL COHABITATION REPEAL**

AN ACT to create and enact a new section to chapter 12.1-31 of the North Dakota Century Code, relating to false representation of marital status; to amend and reenact subsection 1 of section 23-07-07.5 and section 23-07.7-01 of the North Dakota Century Code, relating to sexual offense medical testing; to repeal section 12.1-20-10 of the North Dakota Century Code, relating to an individual's living arrangements; and to provide a penalty.

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

**SECTION 1.** A new section to chapter 12.1-31 of the North Dakota Century Code is created and enacted as follows:

**False representation of marital status.** An individual is guilty of a class B misdemeanor if the individual lives openly and notoriously with an individual of the opposite sex as a married couple without being married to the other individual and falsely represents the couple's status as being married to each other.

**SECTION 2. AMENDMENT.** Subsection 1 of section 23-07-07.5 of the North Dakota Century Code is amended and reenacted as follows:

1. The following individuals must be examined or tested for the presence of antibodies to or antigens of the human immunodeficiency virus:
  - a. Every individual convicted of a crime who is imprisoned for fifteen days or more in a grade one or grade two jail, a regional correctional facility, or the state penitentiary;
  - b. Every individual, whether imprisoned or not, who is convicted of a sexual offense under chapter 12.1-20, except for those convicted of violating sections ~~12.1-20-10~~, 12.1-20-12.1, and 12.1-20-13; and
  - c. Every individual, whether imprisoned or not, who is convicted of an offense involving the use of a controlled substance, as defined in chapter 19-03.1, and the offense involved the use of paraphernalia, including any type of syringe or hypodermic needle, that creates an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus.

<sup>73</sup> **SECTION 3. AMENDMENT.** Section 23-07.7-01 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.7-01. Court-ordered sexual offense medical testing.** The court may order any defendant charged with a sex offense under chapter 12.1-20 and any alleged juvenile offender with respect to whom a petition has been filed in a juvenile court alleging violation of chapter 12.1-20 to undergo medical testing to determine whether the defendant or alleged juvenile offender has any sexually transmitted diseases, including a test for infection with the human immunodeficiency virus or any other identified positive agent of acquired immunodeficiency syndrome. The court may not order a defendant charged with violating section ~~12.1-20-10~~, 12.1-20-12.1; or 12.1-20-13 or an alleged juvenile offender with respect to when a petition has been filed in a juvenile court alleging violation of section ~~12.1-20-10~~, 12.1-20-12.1; or 12.1-20-13 to undergo the testing authorized by this section. The court may order the testing only if the court receives a petition from the alleged victim of the offense or from the prosecuting attorney if the alleged victim has made a written request to the prosecuting attorney to petition the court for an order authorized under this section. On receipt of a petition, the court shall determine, without a hearing, if probable cause exists to believe that a possible transfer of a sexually transmitted disease or human immunodeficiency virus took place between the defendant or alleged juvenile offender and the alleged victim. If the court determines probable cause exists, the court shall order the defendant or alleged juvenile offender to submit to testing and that a copy of the test results be released to the defendant's or alleged juvenile offender's physician and each requesting victim's physician. The physicians for the defendant or alleged juvenile offender and requesting victim must be specifically named in the court order, and the court order must be served on the physicians before any test.

**SECTION 4. REPEAL.** Section 12.1-20-10 of the North Dakota Century Code is repealed.

Approved April 27, 2007  
Filed April 27, 2007

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<sup>73</sup> Section 23-07.7-01 was also amended by section 1 of Senate Bill No. 2358, chapter 239.



## CHAPTER 132

### HOUSE BILL NO. 1466

(Representatives Kerzman, Metcalf)  
(Senators Christmann, Erbele)

### ABORTION PROHIBITION

AN ACT to create and enact a new section to chapter 12.1-31 of the North Dakota Century Code, relating to the prohibition of the performance of abortions; to provide a penalty; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 12.1-31 of the North Dakota Century Code is created and enacted as follows:

#### **Abortion - Affirmative defenses.**

1. As used in this section:

- a. "Abortion" means the use or prescription of any substance, device, instrument, medicine, or drug to intentionally terminate the pregnancy of an individual known to be pregnant. The term does not include an act made with the intent to increase the probability of a live birth; preserve the life or health of a child after live birth; or remove a dead, unborn child who died as a result of a spontaneous miscarriage, an accidental trauma, or a criminal assault upon the pregnant female or her unborn child.
- b. "Physician" means an individual licensed to practice medicine under chapter 43-17.
- c. "Professional judgment" means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

2. It is a class C felony for a person, other than the pregnant female upon whom the abortion was performed, to perform an abortion.

3. The following are affirmative defenses under this section:

- a. That the abortion was necessary in professional judgment and was intended to prevent the death of the pregnant female.
- b. That the abortion was to terminate a pregnancy that resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20.
- c. That the individual was acting within the scope of that individual's regulated profession and under the direction of or at the direction of a physician.

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective on the date the legislative council approves by motion the recommendation of the attorney general to the legislative council that it is reasonably probable that this Act would be upheld as constitutional.

Approved April 26, 2007  
Filed April 27, 2007

**CHAPTER 133****SENATE BILL NO. 2352**

(Senators Wanzek, J. Lee, Robinson, Wardner)  
(Representatives Headland, Hunskor)

**TATTOOING AND PIERCING OF MINORS**

AN ACT to create and enact a new section to chapter 12.1-31 of the North Dakota Century Code, relating to limitations on tattooing, branding, subdermal implantation, scarifying, and body piercing of minors; to amend and reenact the new section to chapter 23-01 of the North Dakota Century Code as created by section 1 of House Bill No. 1505, as approved by the sixtieth legislative assembly, relating to the regulation of tattooing, body piercing, branding, subdermal implants, and scarification; and to provide a penalty.

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

**SECTION 1.** A new section to chapter 12.1-31 of the North Dakota Century Code is created and enacted as follows:

**Tattooing, branding, subdermal implants, scarifying, and piercing - Minors.**

1. As used in this section:
  - a. "Brand" means the use of heat, cold, or any chemical compound to imprint permanent markings on an individual's skin.
  - b. "Pierce" means the puncture of any part of an individual's body to insert studs, pins, rings, chains, or other jewelry or adornment.
  - c. "Scarify" means to cut, tear, or abrade an individual's skin for the purpose of creating a permanent mark or design on the skin.
  - d. "Subdermal implant" means to insert a foreign object beneath the skin to decorate an individual's body.
  - e. "Tattoo" means to mark the skin of an individual by insertion of permanent colors through puncture of the skin.
2. It is a class B misdemeanor for a person, other than a licensed health care professional acting within that professional's scope of practice, to tattoo, brand, subdermal implant, scarify, or pierce an individual who is under eighteen years of age unless the tattooing, branding, subdermal implanting, scarifying, or piercing takes place in the presence of and with the written consent of the individual's parent or legal guardian.
3. It is a class B misdemeanor for a person to sell, trade, or otherwise provide materials or kits for tattooing, self-tattooing, branding, self-branding, scarifying, self-scarifying, subdermal implanting, self-subdermal implanting, body piercing, or self-body piercing to an individual who is under eighteen years of age.

4. A political subdivision may enact and enforce an ordinance restricting tattooing, branding, subdermal implanting, scarifying, and piercing or restricting the sale of tattooing, branding, subdermal implanting, scarifying, and piercing materials and kits if the ordinance is equal to or more stringent than this section.

<sup>74</sup> **SECTION 2. AMENDMENT.** The new section to chapter 23-01 of the North Dakota Century Code as created by section 1 of House Bill No. 1505, as approved by the sixtieth legislative assembly, is amended and reenacted as follows:

**Tattooing, body piercing, branding, subdermal implants, and scarification - Permit - Fee - Adoption of rules - Exemptions - Injury reports.**

1. A person may not operate a facility providing tattooing, body piercing, branding, subdermal implant, ~~and~~ or scarification services without a permit issued by the department under this section. The holder of a permit shall display the permit in a conspicuous place at the facility for which the permit is issued. A permit issued under this section expires annually. An applicant for a permit shall submit an application for a permit to the department, on a form provided by the department, with a permit fee established by the department. The application must include the name and complete mailing address and street address of the facility and any other information reasonably required by the department for the administration of this section.
2. The health council shall adopt rules to regulate any person that receives compensation for engaging in the practice of tattooing, body piercing, branding, subdermal implants, or scarification. The rules must establish health and safety requirements and limitations with respect to the age of an individual who may receive a tattoo, body piercing, or scarification and may prohibit any practice that the health council deems unsafe or a threat to public health.
3. A facility is exempt from subsection 1 if the facility provides body piercing that is limited to the piercing of the noncartilaginous perimeter or lobe of the ear and the facility does not provide tattooing, branding, scarification, or subdermal implants. A person is exempt from regulation under subsection 2 if the person's practice under this section is limited to piercing of the noncartilaginous perimeter or lobe of the ear. A licensed health care professional acting within that professional's scope of practice and the associated medical facility are exempt from this section.
4. If a customer of a facility regulated under this section reports to the facility an injury the customer or operator of the facility believes to have resulted from the tattooing, body piercing, branding, subdermal implanting, or scarification provided at the facility, the operator of the facility shall provide the customer with written information on how to report the alleged injury to the state department of health. If a licensed health care professional treats a patient for an injury the professional determines, in the exercise of professional judgment, occurred as a

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<sup>74</sup> Section 23-01-35 was created by section 1 of House Bill No. 1505, chapter 233.

result of a service regulated under this section, the professional shall report the circumstances to the state department of health. A licensed health care professional is immune from liability for making or not making a report under this subsection.

5. The fees established by the department must be based on the cost of conducting routine and complaint inspections and enforcement actions and preparing and sending license renewals. Fees collected under this section must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly. The department shall waive all or a portion of the fee for any facility that is subject to local jurisdiction.

Approved May 4, 2007  
Filed May 4, 2007

**CHAPTER 134****HOUSE BILL NO. 1075**

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

**CREDIT AT SENTENCING**

AN ACT to amend and reenact subsection 2 of section 12.1-32-02 of the North Dakota Century Code, relating to sentencing and credit for time spent in custody.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

2. Credit against any sentence to a term of imprisonment must be given by the court to a defendant for all time spent in custody as a result of the criminal charge for which the sentence was imposed or as a result of the conduct on which such charge was based. "Time spent in custody" includes time spent in custody in a jail or mental institution for the offense charged, whether that time is spent prior to trial, during trial, pending sentence, or pending appeal. The total amount of credit the defendant is entitled to for time spent in custody must be stated in the criminal judgment.

Approved March 6, 2007

Filed March 7, 2007

**CHAPTER 135****SENATE BILL NO. 2241**

(Senators Anderson, Lyson)  
(Representative Williams)

**PROBATION CONDITIONS**

AN ACT to amend and reenact subsection 3 of section 12.1-32-07 of the North Dakota Century Code, relating to the conditions of probation.

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

<sup>75</sup> **SECTION 1. AMENDMENT.** Subsection 3 of section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation ~~and~~. Except when the offense is a misdemeanor offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:
  - a. Community service;
  - b. Day reporting;
  - c. Curfew;
  - d. Home confinement;
  - e. House arrest;
  - f. Electronic monitoring;

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<sup>75</sup> Section 12.1-32-07 was also amended by section 5 of House Bill No. 1015, chapter 15, and section 3 of House Bill No. 1122, chapter 119.

- g. Residential halfway house; or
- h. Intensive supervision program.

Approved April 4, 2007  
Filed April 5, 2007



**CHAPTER 136****SENATE BILL NO. 2259**

(Senators Dever, Flakoll, Freborg)  
(Representatives Delmore, Headland, Thoreson)

**SEXUAL OFFENDER REGISTRATION**

AN ACT to amend and reenact subsections 1, 2, 3, 7, 8, and 9 of section 12.1-32-15 of the North Dakota Century Code, relating to registration requirements for sexual offenders and offenders against children.

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

<sup>76</sup> **SECTION 1. AMENDMENT.** Subsections 1, 2, 3, 7, 8, and 9 of section 12.1-32-15 of the North Dakota Century Code are amended and reenacted as follows:

1. As used in this section:
  - a. "A crime against a child" means a violation of chapter 12.1-16, section 12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04, subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01, 12.1-18-02, 12.1-18-05, chapter 12.1-29, or subdivision a of subsection 1 or subsection 2 of section 14-09-22, or an equivalent ~~ordinance~~ offense from another court in the United States, a tribal court, or court of another country, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt to commit these offenses.
  - b. "Department" means the department of corrections and rehabilitation.
  - c. "Mental abnormality" means a congenital or acquired condition of an individual that affects the emotional or volitional capacity of the individual in a manner that predisposes that individual to the commission of criminal sexual acts to a degree that makes the individual a menace to the health and safety of other individuals.
  - d. "Predatory" means an act directed at a stranger or at an individual with whom a relationship has been established or promoted for the primary purpose of victimization.
  - e. "Sexual offender" means a person who has pled guilty to or been found guilty, including juvenile delinquent adjudications, of a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-05.1, 12.1-20-06, 12.1-20-07 except for subdivision a, 12.1-20-11, 12.1-20-12.1, or 12.1-20-12.2, chapter

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<sup>76</sup> Section 12.1-32-15 was created by section 4 of House Bill No. 1472, chapter 124.

12.1-27.2, or subsection 2 of section 12.1-22-03.1, or an equivalent ordinance offense from another court in the United States, a tribal court, or court of another country, or an attempt to commit these offenses.

- f. "Sexually dangerous individual" means an individual who meets the definition specified in section 25-03.3-01.
  - g. "Temporarily domiciled" means staying or being physically present in this state for more than thirty days in a calendar year or at a location for longer than ten consecutive days, attending school for longer than ten days, or maintaining employment in the jurisdiction for longer than ten days, regardless of the state of the residence.
2. The court shall impose, in addition to any penalty provided by law, a requirement that the individual register, within ~~ten~~ three days of coming into a county in which the individual resides or is temporarily domiciled. The individual must register with the chief of police of the city or the sheriff of the county if the individual resides, attends school, or is employed in an area other than a city. The court shall require an individual to register by stating this requirement on the court records, if that individual:
- a. Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual offender or an attempted felonious sexual offender, including juvenile delinquent adjudications of equivalent offenses unless the offense is listed in subdivision c.
  - b. Has pled guilty or nolo contendere to, or been found guilty as a sexual offender for, a misdemeanor or attempted misdemeanor. The court may deviate from requiring an individual to register if the court first finds the individual is no more than three years older than the victim if the victim is a minor, the individual has not previously been convicted as a sexual offender or of a crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.
  - c. Is a juvenile found delinquent under subdivision d of subsection 1 of section 12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual offender for a misdemeanor. The court may deviate from requiring the juvenile to register if the court first finds the juvenile has not previously been convicted as a sexual offender or for a crime against a child, and the juvenile did not exhibit mental abnormality or predatory conduct in the commission of the offense.
  - d. Has pled guilty or nolo contendere to, or been found guilty of, a crime against a child or an attempted crime against a child, including juvenile delinquent adjudications of equivalent offenses. Except if the offense is described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent of the victim, the court may deviate from requiring an individual to register if the court first finds the individual has not previously been convicted as a sexual offender or for a crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.

- e. Has pled guilty or nolo contendere, been found guilty, or been adjudicated delinquent of any crime against another individual which is not otherwise specified in this section if the court finds the individual demonstrated mental abnormality or sexual predatory conduct in the commission of the offense and therefore orders registration for the individual. If the court orders an individual to register as an offender under this section, the individual shall comply with all of the registration requirements in this chapter.
3. If a court has not ordered an individual to register in this state, an individual who resides or is temporarily domiciled in this state shall register if the individual:
  - a. Is incarcerated or is on probation or parole after July 31, 1995, for a crime against a child described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 if the individual was not the parent of the victim, or as a sexual offender;
  - b. Has pled guilty or nolo contendere to, or been found guilty of, an offense in a court of this state for which registration is mandatory under this section or ~~another state or the federal government~~ an offense from another court in the United States, a tribal court, or court of another country equivalent to those offenses set forth in this section; or
  - c. Has pled guilty or nolo contendere to, or has been found guilty of, a crime against a child or as a sexual offender for which registration is mandatory under this section if the conviction occurred after July 31, 1985.
7. Registration consists of a written statement signed by the individual, giving the information required by the attorney general, and the fingerprints and photograph of the individual. An individual who is not required to provide a sample of blood and other body fluids under section 31-13-03 or by the individual's state or court of conviction or adjudication shall submit a sample of blood and other body fluids for inclusion in a centralized data base of DNA identification records under section 31-13-05. The collection, submission, testing and analysis of, and records produced from, samples of blood and other body fluids, are subject to chapter 31-13. Evidence of the DNA profile comparison is admissible in accordance with section 31-13-02. A report of the DNA analysis certified by the state crime laboratory is admissible in accordance with section 31-13-05. A district court shall order an individual who refuses to submit a sample of blood or other body fluids for registration purposes to show cause at a specified time and place why the individual should not be required to submit the sample required under this subsection. Within three days after registration, the registering law enforcement agency shall forward the statement, fingerprints, and photograph to the attorney general and shall submit the sample of the individual's blood and body fluids to the state crime laboratory. If an individual required to register pursuant to this section has a change in name, school, or address, that individual shall inform in writing, at least ten days before the change, the law enforcement agency with whom that individual last registered of the individual's new name, school, residence address, or employment address. The law enforcement agency, within three days after receipt of the information,

shall forward it to the attorney general. The attorney general shall forward the appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. Upon a change of address, the individual required to register shall also register within ~~ten~~ three days at the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. The individual registering under this section shall periodically confirm the information required under this subsection in a manner and at an interval determined by the attorney general. A law enforcement agency that has previously registered an offender may omit the fingerprint portion of the registration if that agency has a set of fingerprints on file for that individual and is personally familiar with and can visually identify the offender. These provisions also apply in any other state that requires registration.

8. An individual required to register under this section shall comply with the registration requirement for the longer of the following periods:
  - a. A period of ~~ten~~ fifteen years after the date of sentence or order deferring or suspending sentence upon a plea or finding of guilt or after release from incarceration, whichever is later; ~~or~~
  - b. A period of twenty-five years after the date of sentence or order deferring or suspending sentence upon a plea or finding of guilt or after release from incarceration, whichever is later, if the offender is assigned a moderate risk by the attorney general as provided in subsection 12; or
  - c. For the life of the individual, if that individual:
    - (1) On two or more occasions has pled guilty or nolo contendere to, or been found guilty of a crime against a child or as a sexual offender, ~~or an equivalent offense of another state or the federal government.~~ If all qualifying offenses are misdemeanors, this lifetime provision does not apply unless a qualifying offense was committed after August 1, 1999;
    - (2) Pleads guilty or nolo contendere to, or is found guilty of, an offense committed after August 1, 1999, which is described in subdivision a of subsection 1 of section 12.1-20-03, section 12.1-20-03.1, or subdivision d of subsection 1 of section 12.1-20-03 if the person is an adult and the victim is under age twelve, or section 12.1-18-01 if that individual is an adult other than a parent of the victim, or an equivalent offense ~~of another state or the federal government from another court in the United States, a tribal court, or court of another country;~~ or
    - (3) ~~Has been civilly committed as a sexually dangerous individual under chapter 25-03.3, under the laws of another state, or by the federal government~~ Is assigned a high risk by the attorney general as provided in subsection 12.

9. An individual required to register under this section who violates this section is guilty of a class A ~~misdemeanor~~ C felony. A court may not relieve an individual, other than a juvenile, who violates this section from serving a term of at least ninety days in jail and completing probation of one year. ~~An individual who violates this section who previously has pled guilty or been found guilty of violating this section is guilty of a class C felony.~~

Approved April 30, 2007  
Filed May 1, 2007

**CHAPTER 137****HOUSE BILL NO. 1219**

(Representatives Delmore, Dahl, DeKrey, Kretschmar)  
(Senators Lyson, Nelson)

**VICTIM INFORMATION AND NOTIFICATION SYSTEM**

AN ACT to create and enact a new section to chapter 12.1-34 of the North Dakota Century Code, relating to establishment and administration of a statewide automated victim information and notification system; and to provide for a legislative council study.

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

**SECTION 1.** A new section to chapter 12.1-34 of the North Dakota Century Code is created and enacted as follows:

**Statewide automated victim information and notification system.**

1. The information technology department may establish a statewide automated victim information and notification system that may be administered by the department of corrections and rehabilitation and must:
  - a. Permit a victim to register or update the victim's registration information for the system by calling a toll-free telephone number or accessing a public web site.
  - b. Notify a registered victim by telephone, mail, or e-mail when any of the following events affect an offender under the supervision or in the custody of the department of corrections and rehabilitation or other correctional facility in the state:
    - (1) The offender is transferred or assigned to another facility.
    - (2) The offender is transferred to the custody of another agency outside the state.
    - (3) The offender is given a different security classification.
    - (4) The offender is released on temporary leave or otherwise.
    - (5) The offender is discharged.
    - (6) The offender has escaped.
    - (7) The offender has been served with a protective order that was requested by the victim.
  - c. Notify a registered victim by telephone, mail, or e-mail when the offender has a scheduled court proceeding at which the victim is entitled to be present, a scheduled parole or pardon hearing, or a

change in the status of the offender's parole or probation status, including a change in the offender's address.

- d. Notify a registered victim by telephone, mail, or e-mail when a registered sexual offender has updated the offender's registration information or failed to comply with any registration requirement.
  - e. Permit a victim to receive a status report for an offender under the supervision or in the custody of the department of corrections and rehabilitation or other correctional facility or for a registered sexual offender by calling the system on a toll-free telephone number or by accessing the system through a public web site.
2. If a statewide automated victim information and notification system is established, the provision of offender and case data on a timely basis to the automated victim information and notification system satisfies any obligation under this chapter to notify a registered victim of an offender's custody and the status of the offender's scheduled court proceedings.
  3. If a statewide automated victim information and notification system is established, the system operator shall ensure that an offender's information contained in the system is updated to timely notify a victim that an offender has been released or discharged or has escaped. The failure of the system to provide notice to the victim does not establish a cause of action by the victim against the state or any custodial authority.
  4. Custodial authorities shall cooperate with the system operator in establishing and maintaining the statewide automated victim information and notification system.

**SECTION 2. LEGISLATIVE COUNCIL STUDY - STATEWIDE AUTOMATED VICTIM INFORMATION AND NOTIFICATION SYSTEM.** The legislative council shall consider studying, during the 2007-08 interim, the feasibility and desirability of establishing a statewide automated victim information and notification system to provide information and notify registered victims regarding the status of an offender. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Approved April 11, 2007  
Filed April 13, 2007

**CHAPTER 138****SENATE BILL NO. 2103**

(Senators Lyson, Dever, Heckaman)  
(Representatives Carlisle, Porter)

**SEXUAL ASSAULT EXAMINATION COSTS**

AN ACT to create and enact a new section to chapter 12.1-34 of the North Dakota Century Code, relating to the cost of acute forensic medical examinations for alleged victims of sexual assault; to provide an appropriation; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 12.1-34 of the North Dakota Century Code is created and enacted as follows:

**Acute forensic medical examinations costs - Reimbursement by attorney general - Use of evidence.**

1. An acute forensic medical examination is an examination performed on an alleged victim of criminal sexual conduct for the purpose of gathering evidence of an alleged crime and is performed within ninety-six hours after the alleged crime unless good cause is shown for the delay in performing the examination. When an acute forensic medical examination is performed, the costs incurred by a health care facility or health care professional for performing the examination may not be charged, either directly or through a third-party payer, to the alleged victim.
2. Upon submission of appropriate documentation, the attorney general, within the limits of legislative appropriations, shall reimburse the health care facility or a health care professional for the reasonable costs incurred in performing an examination.
3. Evidence obtained during an acute forensic medical examination may not be used against an alleged victim for the prosecution of the alleged victim for a separate offense.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the insurance regulatory trust fund in the state treasury, not otherwise appropriated, the sum of \$500,000, or so much of the sum as may be necessary, to the attorney general for the purpose of reimbursing health care facilities and health care professionals for the costs of performing acute forensic medical examinations on alleged victims of criminal sexual conduct, for the biennium beginning July 1, 2007, and ending June 30, 2009.

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

Approved April 26, 2007  
Filed April 27, 2007



# DEBTOR AND CREDITOR RELATIONSHIP

## CHAPTER 139

**SENATE BILL NO. 2210**  
(Senators J. Lee, Krebsbach)  
(Representatives Kaldor, Porter, Price)

### MEDICAL BILL LATE PAYMENT CHARGES

AN ACT to create and enact a new section to chapter 13-01 of the North Dakota Century Code, relating to the amount of late payment charges and finance charges on medical bills; and to amend and reenact sections 13-01-14 and 13-01-15 of the North Dakota Century Code, relating to the amount of late payment charges on medical bills.

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

<sup>77</sup> **SECTION 1. AMENDMENT.** Section 13-01-14 of the North Dakota Century Code is amended and reenacted as follows:

#### **13-01-14. Late payment charge on accounts receivable - ~~Medical bills~~ Exceptions.**

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. ~~Except as provided in subsection 4, the~~ The late payment charge allowed under this section may not exceed one and three-fourths percent per month.
3. The late payment charge ~~provided in~~ allowed under this section may not be charged ~~only if~~ unless, 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. ~~A creditor may not charge, receive, or collect a late payment charge on medical or hospital bills during the initial ninety days following services. After the initial ninety days have passed, a late payment charge may be imposed at a rate that does not exceed one percent per month. A late payment charged by a hospital under this subsection may not exceed twenty five dollars per month. This subsection does not apply in cases of financial hardship as certified by the creditor. A medical services~~

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<sup>77</sup> Section 13-01-14 was also amended by section 1 of House Bill No. 1328, chapter 140.

~~provider may not charge, receive, or collect a credit service charge on money due on a revolving charge account under chapter 51-14.~~

5. ~~Except as otherwise provided under subsection 4, this 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 a medical services provider on accounts receivable for medical bills.~~

**SECTION 2.** A new section to chapter 13-01 of the North Dakota Century Code is created and enacted as follows:

**Late payment charge on accounts receivable for medical services - Limitations on extensions of credit by medical providers.**

1. This section applies to a creditor that is a medical services provider for debts incurred in providing medical services.
2. A creditor that is a medical services provider may not charge, receive, or collect a late payment charge on money due on an account receivable for medical services except as provided under this section. For purposes of late charges on accounts receivable under this section:
  - a. An account for medical services, except an account for medical services of a licensed nursing facility or basic care facility, does not become delinquent until ninety days have passed following receipt of the billed medical services; and
  - b. An account for medical services of a licensed nursing facility or basic care facility does not become delinquent until forty-five days have passed following billing of the medical services.
3. The account receivable late payment charge allowed under this section may not be charged unless, when the obligation was incurred, the creditor did not intend to extend any credit and late payment of the obligation was unanticipated.
4. A creditor that is not a hospital may charge, receive, and collect an account receivable late payment charge under this section at a rate that does not exceed one percent per month. A creditor that is a hospital may charge, receive, and collect an account receivable late payment charge under this section at a rate that does not exceed one percent per month, not to exceed twenty-five dollars per month.
5. Notwithstanding a higher rate or amount that may be allowed under any other law or agreed to in any written or verbal agreement, the finance charge, credit service charge, or rate of interest for an extension of credit for medical services which is charged by:

- a. A medical services provider that is not a hospital may not exceed one percent per month.
- b. A hospital may not exceed one percent per month, not to exceed twenty-five dollars per month.

**SECTION 3. AMENDMENT.** Section 13-01-15 of the North Dakota Century Code is amended and reenacted as follows:

**13-01-15. Late payment on accounts receivable - Periodic statement to be furnished to debtor.**

1. A creditor may not charge the account receivable late payment charge provided for ~~in~~ under section 13-01-14 ~~only if~~ or section 2 of this Act unless the creditor promptly supplies the debtor with a statement as of the end of each monthly period, or other regular period agreed upon by the creditor and the debtor, in which there is any unpaid balance.
2. Such statement must ~~recite~~ state, in any order, the following:
  - a. The percentage amount of the late payment charge which will be charged beginning thirty days after the obligation is incurred for purposes of section 13-01-14, or beginning after the billed medical services become delinquent for purposes of section 2 of this Act.
  - b. The unpaid balance at the end of the period.
  - c. An identification of any amount debited to the debtor's account during the period.
  - d. The payments made by or for the debtor to the creditor during the period.
  - e. The amount of the late payment charge.

~~The items need not be stated in the sequence or order set forth above.~~

3. Additional items may be included in the statement to explain the computations made in determining the amount to be paid by the debtor.

Approved April 5, 2007  
Filed April 5, 2007

**CHAPTER 140****HOUSE BILL NO. 1328**

(Representatives Herbel, Keiser)

**ACCOUNTS RECEIVABLE LATE PAYMENT CHARGES**

AN ACT to amend and reenact subsection 1 of 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 NORTH DAKOTA:**

<sup>78</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 13-01-14 of the North Dakota Century Code is amended and reenacted as follows:

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. A creditor may assign an account receivable that is subject to this section. An assignee of an account receivable has the same right to charge a late payment charge as does an original creditor for the assigned account receivable.

Approved March 23, 2007

Filed March 23, 2007

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<sup>78</sup> Section 13-01-14 was also amended by section 1 of Senate Bill No. 2210, chapter 139.

**CHAPTER 141****HOUSE BILL NO. 1117**

(Industry, Business and Labor Committee)  
(At the request of the Department of Financial Institutions)

**FINANCIAL INSTITUTIONS PRACTICES, FEES, AND  
LICENSES**

AN ACT to create and enact three new sections to chapter 13-03.1 and sections 13-04.1-01.1, 13-04.1-02.1, 13-05-01.1, and 13-05-02.3 of the North Dakota Century Code, relating to fraudulent financial practices, prohibition of advance fees, orders and injunctions of the department of financial institutions, definitions, and exemptions; and to amend and reenact sections 13-04.1-02 and 13-05-02 and subsection 1 of section 13-05-02.2 of the North Dakota Century Code, relating to money broker and collection agency licenses.

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

**SECTION 1.** A new section to chapter 13-03.1 of the North Dakota Century Code is created and enacted as follows:

**Fraudulent practices.** It is a fraudulent practice and it is unlawful:

1. For a person knowingly to subscribe to, or make or cause to be made, any material false statement or representation in an application or other document or statement required to be filed under a provision of this chapter, or to omit to state a material statement or fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading.
2. For a person, in connection with the procurement or promise of procurement of a lender or loan funds, directly or indirectly, to employ a device, scheme, or artifice to defraud.
3. For a person, in connection with the procurement or promise of procurement of a lender or loan funds, directly or indirectly, to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading.

**SECTION 2.** A new section to chapter 13-03.1 of the North Dakota Century Code is created and enacted as follows:

**Advance fees prohibited - Exception.** A person may not take any type of fee in advance before the funding of the loan or lease, unless the person is licensed under this chapter.

**SECTION 3.** A new section to chapter 13-03.1 of the North Dakota Century Code is created and enacted as follows:

**Orders and injunctions.** Whenever it appears to the department of financial institutions either upon complaint or otherwise that a person has engaged in, is engaging in, or is about to engage in an act or practice or transaction that is prohibited by this chapter, or by an order of the department issued pursuant to a section of this chapter or which is declared to be illegal in this chapter, the department may:

1. Issue an order, including cease and desist, stop, and suspension orders, which it deems necessary or appropriate in the public interest or for the protection of the public. However, a person aggrieved by an order issued pursuant to this subsection may request a hearing before the department if the request is made within ten days after receipt of the order. The hearing must be held in accordance with chapter 28-32 as must an appeal therefrom.
2. Apply to the district court of any county in this state for an injunction restraining such person and the agents, employees, partners, officers, and directors of such person from continuing such act, practice, or transaction of engaging therein or doing any acts in furtherance thereof, and for such other and further relief as the facts may warrant. In a proceeding for an injunction, the department may apply for and on due showing be entitled to have issued the court's subpoena requiring the appearance forthwith of any defendants and their agents, employees, partners, officers, or directors, and the production of such documents, books, and records as may appear necessary for the hearing upon the petition for an injunction. Upon proof of any of the offenses described in this section, the court may grant such injunction as the facts may warrant. The court may not require the department to post a bond.

**SECTION 4.** Section 13-04.1-01.1 of the North Dakota Century Code is created and enacted as follows:

**13-04.1-01.1. Definitions.** As used in this chapter, unless the context or subject matter otherwise requires:

1. "Borrower" means a person or entity that seeks out, or is solicited by a money broker for the purpose of money brokering.
2. "Commissioner" means the commissioner of financial institutions.
3. "Money broker" means a person or entity who, in the ordinary course of business, engages in money brokering.
4. "Money brokering" means the act of arranging or providing loans or leases as a form of financing, or advertising or soliciting either in print, by letter, in person, or otherwise, the right to find lenders or provide loans or leases for persons or businesses desirous of obtaining funds for any purposes.

**SECTION 5. AMENDMENT.** Section 13-04.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-02. Money broker license required.** Except as otherwise herein provided, a person other than a money broker licensed and authorized under this chapter may not ~~provide loans or leases as a form of financing, or advertise or solicit either in print, by letter, in person, or otherwise in~~ engage in money brokering in the

state of North Dakota, the right to find lenders or provide loans or leases for persons or businesses desirous of obtaining funds for any purposes. As used in this chapter, the term "money broker" does not include banks, credit unions, savings and loan associations, insurance companies, small loan companies, consumer finance companies, state or federal agencies and their employees, institutions chartered by the farm credit administration, trust companies, or any other person or business regulated and licensed by the state of North Dakota. The term "money broker" also does not include a real estate broker, broker, or a real estate salesperson as defined in section 43-23-06.1 in the brokering of loans to assist a person in obtaining financing for real estate sold by the real estate broker, broker, or real estate salesperson. The term "money broker" also does not include any persons, retail sellers, or manufacturers providing lease financing for their own property or inventory held as a normal course of business, or to leases on any real property without a money broker license issued by the commissioner. A person engages in money brokering in North Dakota if the borrower resides in North Dakota.

**SECTION 6.** Section 13-04.1-02.1 of the North Dakota Century Code is created and enacted as follows:

**13-04.1-02.1. Entities exempted from licensing requirements.** This chapter does not apply to:

1. Banks;
2. Credit unions;
3. Savings and loan associations;
4. Insurance companies;
5. North Dakota licensed consumer finance companies;
6. State or federal agencies and their employees;
7. Institutions chartered by the farm credit administration;
8. Trust companies;
9. Any other person or business regulated and licensed by the state of North Dakota;
10. A real estate broker, broker, or a real estate salesperson as defined in section 43-23-06.1 in the brokering of loans to assist a person in obtaining financing for real estate sold by the real estate broker, broker, or real estate salesperson; or
11. Any person, retail seller, or manufacturer providing lease financing for its own property or inventory held as a normal course of business, or to leases on any real property.

**SECTION 7.** Section 13-05-01.1 of the North Dakota Century Code is created and enacted as follows:

**13-05-01.1. Definitions.** As used in this chapter, unless the context or subject matter otherwise requires:

1. "Collection agency" means a person or entity who, in the ordinary course of business, engages in debt collection.
2. "Commissioner" means the commissioner of financial institutions.
3. "Communication" means the conveyance or receipt of information regarding or facilitating the collection of a debt, directly or indirectly, to or from any person through any medium.
4. "Creditor" means a person who offers or extends credit creating a debt or to whom a debt is owed, but that term does not include a person to the extent that that person receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of that debt for another.
5. "Debt" means an obligation or alleged obligation to pay money arising out of a transaction, whether or not the obligation has been reduced to a judgment.
6. "Debt collection" means the act of collecting or attempting to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. As used in this chapter, this term also includes solicitation of debts for the purpose of collection and accepting assignment of debts for the purpose of collection.
7. "Mortgage servicing company" means a company performing the required duties of a mortgage seller, such as collecting payments, releasing the lien on full payment, and confirming that taxes are paid and insurance is in force.

**SECTION 8. AMENDMENT.** Section 13-05-02 of the North Dakota Century Code is amended and reenacted as follows:

**13-05-02. Collection agency license required to collect claims.** Except as otherwise herein provided in this chapter, no person, other than a collection agency licensed and authorized under this chapter, may ~~advertise or solicit either in print, by letter, in person, or otherwise, the right to collect or receive payment of any claim for another or sell or give away collection letters as demand forms engage in debt collection~~ in the state of North Dakota ~~without a collection agency license issued by the commissioner. A person engages in debt collection in North Dakota if the debtor resides in North Dakota. As used in this chapter, the term "collection agency" does not include attorneys at law who are licensed to practice in the state of North Dakota, licensed real estate brokers, banks, trust companies, building and loan associations, credit unions, agencies of a state or of the federal government, abstract companies doing an escrow business, creditors collecting their own debts, individuals or firms who purchase or take accounts receivable for collateral purposes, individuals employed in the capacity of creditman upon the staff of an employer not engaged in the business of a collection agency, or any public officer, receiver, or trustee acting under the order of a court. A person may not be considered to be engaged in collection activity within this state if that person's activities are limited to collecting debts from debtors located in this state by means of interstate communications, including telephone, mail, or facsimile transmission from the person's location in another state if the person is licensed and bonded in that state and the state has enacted similar legislation.~~



**SECTION 9. AMENDMENT.** Subsection 1 of section 13-05-02.2 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding ~~section sections~~ 13-05-02 and 13-05-02.3, a collection agency attempting in any manner to collect child support as defined in section 14-09-09.10 must be licensed under this chapter if either the child support debtor or creditor reside within this state, if the child support debt arises under an order issued by a court of this state, or if a record of the child support debt is being maintained on the statewide automated data processing system under section 50-09-02.1.

**SECTION 10.** Section 13-05-02.3 of the North Dakota Century Code is created and enacted as follows:

**13-05-02.3. Entities exempt from licensing requirements.** This chapter does not apply to:

1. Attorneys at law who are licensed to practice in the state of North Dakota. This exemption is limited to the actions of the licensed attorney and does not extend to persons either employed by the attorney or acting on behalf of the attorney;
2. Licensed real estate brokers;
3. Banks;
4. Trust companies;
5. Building and loan associations;
6. Credit unions;
7. Agencies of a state or of the federal government;
8. Abstract companies doing an escrow business;
9. Creditors collecting their own debts;
10. Mortgage servicing company;
11. Individuals or firms who purchase or take accounts receivable for collateral purposes;
12. Individuals employed in the capacity of creditmen upon the staff of an employer not engaged in the business of a collection agency;
13. A public officer, receiver, or trustee acting under the order of a court; or
14. A person whose activities are limited to collecting debts from debtors located in this state by means of interstate communications, including telephone, mail, or facsimile transmission from the person's location in another state if the person is licensed and bonded in that state and that state has enacted similar legislation.

Approved March 6, 2007

Filed March 7, 2007

# DOMESTIC RELATIONS AND PERSONS

## CHAPTER 142

### SENATE BILL NO. 2075

(Industry, Business and Labor Committee)  
(At the request of the Labor Commissioner)

### DISCRIMINATORY PRACTICE DEFINED

AN ACT to amend and reenact subsection 6 of section 14-02.4-02 of the North Dakota Century Code, relating to the definition of the term discriminatory practice for human rights purposes.

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

**SECTION 1. AMENDMENT.** Subsection 6 of section 14-02.4-02 of the North Dakota Century Code is amended and reenacted as follows:

6. "Discriminatory practice" means an act or attempted act which because of race, color, religion, sex, national origin, age, physical or mental disability, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer results in the unequal treatment or separation or segregation of any persons, or denies, prevents, limits, or otherwise adversely affects, or if accomplished would deny, prevent, limit, or otherwise adversely affect, the benefit of enjoyment by any person of employment, labor union membership, public accommodations, public services, or credit transactions. The term "discriminate" includes segregate or separate and for purposes of discrimination based on sex, it includes sexual harassment. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature when:
  - a. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, or education;
  - b. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education, or housing; or

- c. That conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations, public services, or educational environment; and in the case of employment, the employer is responsible for its acts and those of its supervisory employees if it knows or should know of the existence of the harassment and fails to take timely and appropriate action.

Approved March 7, 2007

Filed March 8, 2007

**CHAPTER 143****SENATE BILL NO. 2076**

(Industry, Business and Labor Committee)  
(At the request of the Labor Commissioner)

**HUMAN RIGHTS ENFORCEMENT**

AN ACT to amend and reenact section 14-02.4-22 of the North Dakota Century Code, relating to the duties and powers of the labor department relating to human rights enforcement.

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

**SECTION 1. AMENDMENT.** Section 14-02.4-22 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-22. Duties and powers of department.**

1. The department shall receive and investigate complaints alleging violations of this chapter. The department shall emphasize conciliation to resolve complaints.
2. For the purpose of thoroughly investigating a complaint, the department may require the attendance of a witness and the production of a book, record, document, data, or other object at any hearing or with reference to any matter the department has the authority to investigate. If under this subsection a witness fails or refuses to appear or to produce, the department may issue a subpoena to compel the witness to appear or a subpoena duces tecum to compel the witness to appear and produce a relevant book, record, document, data, or other object.
3. If a person refuses to obey a subpoena, the district court, upon application by the department, may issue to the person an order requiring that person appear and give evidence or otherwise produce documentary evidence requested by the department regarding the matter under investigation.
4. A witness who is subpoenaed under this section and who appears at a hearing or whose deposition is taken is entitled to receive the same fees and mileage as a witness in a civil case in district court.
5. The department may adopt rules necessary to implement this chapter.
6. Within the limits of legislative appropriations, the department shall foster prevention of discrimination under this chapter through education for the public, employers, providers of public accommodations or services, and commercial lenders on the rights and responsibilities provided under this chapter and ways to respect those protected rights. ~~The department shall emphasize conciliation to resolve complaints.~~

7. The department shall publish in even-numbered years a written report recommending legislative or other action to carry out the purposes of this chapter. The department shall conduct studies relating to the nature and extent of discriminatory practices in this state.

Approved April 26, 2007  
Filed April 27, 2007

**CHAPTER 144****SENATE BILL NO. 2074**

(Judiciary Committee)

(At the request of the Labor Commissioner)

**HOUSING DISCRIMINATION**

AN ACT to amend and reenact section 14-02.5-13 of the North Dakota Century Code, relating to the duties and powers of the labor department relating to housing discrimination.

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

**SECTION 1. AMENDMENT.** Section 14-02.5-13 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.5-13. Duties and powers of department.**

1. The department shall administer this chapter. The department may adopt rules necessary to implement this chapter, but substantive rules adopted by the department must impose obligations, rights, and remedies that are the same as are provided in federal fair housing regulations.
2. For the purpose of thoroughly investigating a complaint, the department may require the attendance of a witness and the production of a book, record, document, data, or other object at any hearing or with reference to any matter the department has the authority to investigate. If under this subsection a witness fails or refuses to appear or to produce, the department may issue a subpoena to compel the witness to appear or a subpoena duces tecum to compel the witness to appear and produce a relevant book, record, document, data, or other object.
3. If a person refuses to obey a subpoena, the district court, upon application by the department, may issue to the person an order requiring that person appear and give evidence or otherwise produce documentary evidence requested by the department regarding the matter under investigation.
4. A witness who is subpoenaed under this section and who appears at a hearing or whose deposition is taken is entitled to receive the same fees and mileage as a witness in a civil case in district court.
5. Within the limits of legislative appropriations, the department shall foster prevention of discrimination under this chapter through education for the public, landlords, publishers, realtors, brokers, lenders, and sellers on the rights and responsibilities provided under this chapter and ways to respect those protected rights.
6. The department shall emphasize conciliation to resolve complaints.

Approved May 1, 2007

Filed May 2, 2007

**CHAPTER 145****HOUSE BILL NO. 1414**

(Representatives Heller, Kreidt)  
(Senator Christmann)

**DEBT DIVISION UPON DIVORCE**

AN ACT to amend and reenact section 14-05-24 of the North Dakota Century Code, relating to the division of property in a divorce proceeding.

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

**SECTION 1. AMENDMENT.** Section 14-05-24 of the North Dakota Century Code is amended and reenacted as follows:

**14-05-24. Division of property and debts.**

1. When a divorce is granted, the court shall make an equitable distribution of the property and debts of the parties.
2. The court may redistribute property and debts in a postjudgment proceeding if a party has failed to disclose property and debts as required by rules adopted by the supreme court or the party fails to comply with the terms of a court order distributing property and debts.

Approved March 23, 2007  
Filed March 23, 2007

**CHAPTER 146****HOUSE BILL NO. 1238**

(Representatives Delmore, DeKrey, Koppelman)  
(Senators Fischer, Lyson, Nelson)

**DOMESTIC VIOLENCE CRIME PROCEDURES**

AN ACT to amend and reenact section 14-07.1-01, subsection 2 of section 14-07.1-10, and section 14-07.1-12 of the North Dakota Century Code, relating to law enforcement procedures in crimes involving domestic violence.

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

**SECTION 1. AMENDMENT.** Section 14-07.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**14-07.1-01. Definitions.**

1. "Department" means the state department of health.
2. "Domestic violence" includes physical harm, bodily injury, sexual activity compelled by physical force, assault, or the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or assault, not committed in self-defense, on the complaining family or household members.
3. "Domestic violence sexual assault organization" means a private, nonprofit organization whose primary purpose is to provide emergency housing, twenty-four-hour crisis lines, advocacy, supportive peer counseling, community education, and referral services for victims of domestic violence and sexual assault.
4. "Family or household member" means a spouse, family member, former spouse, parent, child, persons related by blood or marriage, persons who are in a dating relationship, 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 are or have been married or have lived together at any time, and, for the purpose of the issuance of a domestic violence protection order, any other person with a sufficient relationship to the abusing person as determined by the court under section 14-07.1-02.
5. "Health officer" means the state health officer of the department.
6. "Law enforcement officer" means a public servant authorized by law or by a government agency to enforce the law and to conduct or engage in investigations of violations of law.
7. "Predominant aggressor" means an individual who is the most significant, not necessarily the first, aggressor.
8. "Willfully" means willfully as defined in section 12.1-02-02.



**SECTION 2. AMENDMENT.** Subsection 2 of section 14-07.1-10 of the North Dakota Century Code is amended and reenacted as follows:

2. A law enforcement officer investigating a crime involving domestic violence may not threaten, suggest, or otherwise indicate, for the purpose of discouraging requests for law enforcement intervention, that family or household members will be arrested. When complaints are received from two or more family or household members, the officer shall evaluate each complaint separately to determine if either party acted in self-defense as defined in section 12.1-05-03. If self-defense is not a factor, to determine whether to seek an arrest warrant or to pursue further investigation, the officer ~~may determine~~ shall consider which party ~~has engaged in the most immediately significant aggression~~ was the predominant aggressor by considering certain factors, including the comparative severity of injuries involved, any history of domestic violence, or any other violent acts that the officer can reasonably ascertain and the likelihood of future harm.

**SECTION 3. AMENDMENT.** Section 14-07.1-12 of the North Dakota Century Code is amended and reenacted as follows:

**14-07.1-12. Reports.** A law enforcement officer shall make a written report of the investigation of any allegation of domestic violence regardless of whether an arrest was made. If an officer determines through the course of an investigation that one of the individuals ~~has engaged in the most immediately significant aggression~~ was the predominant aggressor, the report must include the name of that individual and a description of the evidence that supports the findings. The officer shall submit the report to the officer's supervisor or to any other person to whom the officer is required to submit similar reports.

Approved March 9, 2007

Filed March 12, 2007

**CHAPTER 147****SENATE BILL NO. 2064**

(Judiciary Committee)

(At the request of the Adjutant General)

**CHILD CUSTODY MODIFICATION**

AN ACT to create and enact a new subsection to section 14-09-06.6 of the North Dakota Century Code, relating to the modification of custody of a child with a service member parent.

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

**SECTION 1.** A new subsection to section 14-09-06.6 of the North Dakota Century Code is created and enacted as follows:

If a motion for change of custody is filed during the time a parent is in active duty service, the court may not enter an order modifying or amending a previous judgment or order, or issue a new order, which changes the child's placement that existed on the date the parent was called to active duty service, except the court may enter a temporary custody order that is in the best interest of the child. The temporary custody order must explicitly provide that custody must be restored to the service member upon the service member's release from active duty service, unless the court finds by clear and convincing evidence that restoration of custody would not be in the best interest of the child. If an original custody decision is pending and the service member is alerted for active duty service, or is absent for active duty service, the court may not issue a permanent custody order until the return of the service member from active duty. The court may issue a temporary custody order in the best interest of the child for the time period of the active duty service. This section does not prevent a service member from consenting to a modification of custody that continues past discharge or release from active duty service or to agreeing to a permanent custody order before release from active duty service. For purposes of this section, "service member" means a member of the national guard or a reserve unit of the United States armed forces and "active duty service" means an order to active duty under United States Code title 10.

Approved March 7, 2007

Filed March 8, 2007

**CHAPTER 148****SENATE BILL NO. 2129**

(Judiciary Committee)

(At the request of the Department of Human Services)

**CHILD SUPPORT ENFORCEMENT**

AN ACT to create and enact subsection 7 to section 12.1-37-01, section 14-09-08.22, a new subdivision to subsection 1 of section 14-09-09.7, section 14-09-09.36, subsection 10 to section 14-09-25, and section 50-09-37 of the North Dakota Century Code, relating to child support enforcement; to amend and reenact subsection 2 of section 14-09-08.1, subsection 3 of section 14-09-08.2, sections 14-09-08.17, 14-09-09, 14-09-09.31, and 14-09-09.33, subsection 2 of section 50-09-02.1, paragraph 2 of subdivision g of subsection 1 of section 50-09-08.2, section 50-09-08.3, subsection 6 of section 50-09-08.6, and subsection 4 of section 50-09-32 of the North Dakota Century Code, relating to child support enforcement; and to declare an emergency.

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

**SECTION 1.** Subsection 7 to section 12.1-37-01 of the North Dakota Century Code is created and enacted as follows:

7. In a prosecution under this chapter, a copy of a record certified under section 14-08.1-08 is admissible as prima facie evidence of the contents of the record.

**SECTION 2. AMENDMENT.** Subsection 2 of section 14-09-08.1 of the North Dakota Century Code is amended and reenacted as follows:

2. a. Each party subject to the order shall immediately inform the state disbursement unit of the party's:
- (1) Social security number;
  - (2) Residential and mailing addresses and any change of address;
  - (3) Telephone number;
  - (4) Motor vehicle operator's license number;
  - (5) Employer's name, address, and telephone number; and
  - (6) Change of any other condition which may affect the proper administration of this chapter.
- b. The requirements of subdivision a must be incorporated into each order for payment of child support must notify each party of the requirements in subdivision a and require the party to provide the information within ten days from the date of the order or ten days after any change in the information.

- c. In any subsequent child support enforcement action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of a party, the court shall deem due process requirements for notice and service to have been met, with respect to the noticed party, by delivery of written notice to the most recent residential or employer address provided by the noticed party pursuant to this subsection.
- d. The requirements of this subsection continue in effect until all child support obligations have been satisfied with respect to each child subject to the order.

**SECTION 3. AMENDMENT.** Subsection 3 of section 14-09-08.2 of the North Dakota Century Code is amended and reenacted as follows:

3. The person to whom the duty of support is owed under either subsection 1 or 2 may file an affidavit with the district court stating that the requirements of subsection 1 are met, the school in which the child is enrolled, and the anticipated date of the child's graduation. Upon filing of the affidavit, the child support ~~continues~~ resumes pursuant to subsection 1 or pursuant to the terms of a judgment or order described in subsection 2. A fee may not be charged for filing such an affidavit.

**SECTION 4. AMENDMENT.** Section 14-09-08.17 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-08.17. Delinquent obligor may not renounce claims.** An obligor whose child support obligation is delinquent may not renounce, waive, assign, transfer, or disclaim any interest that obligor might otherwise claim in a decedent's estate, a trust, or a similar device, to the extent necessary to satisfy the delinquency. Any attempt to renounce, waive, assign, transfer, or disclaim such an interest is void if attempted after notice of the delinquency is furnished to the person administering the estate, trust, or similar device, and is otherwise voidable.

**SECTION 5.** Section 14-09-08.22 of the North Dakota Century Code is created and enacted as follows:

**14-09-08.22. Enforcement of health insurance coverage from an obligee.** When an obligee is required to provide health insurance coverage for a child as a beneficiary under section 14-09-08.10, the order is being enforced under title IV-D, and the obligee's employer has been identified, the public authority may use the national medical support notice to enforce the provision of health insurance coverage for the child. When the national medical support notice is used under this section, sections 14-09-08.11, 14-09-08.20, and 26.1-36.5-03 apply unless the context indicates otherwise.

**SECTION 6. AMENDMENT.** Section 14-09-09 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-09. Liability of stepparent for support.** A stepparent is not bound to maintain the spouse's dependent children, as defined in section 50-09-01, unless the child is received into the stepparent's family. If the stepparent receives them into the family, the stepparent is liable, to the extent of the stepparent's ability, to support them during the marriage and so long thereafter as they remain in the stepparent's family. Such liability may be enforced against the stepparent by any person furnishing necessaries to such children. If an order issued under section

14-09-08.10 requires an obligee to provide health insurance coverage, any coverage that is available to the stepparent for the obligee's dependent children is considered to be available to the obligee and is enforceable against the stepparent by a child support agency. If the children are received into the stepparent's family and supported by the stepparent, it is presumed that the stepparent does so as a parent, in which case the children are not liable to the stepparent for their support, nor the stepparent to them for their services. The legal obligation of a natural or adoptive parent to support that person's children is not affected by the liability imposed upon their stepparent by this section.

<sup>79</sup> **SECTION 7.** A new subdivision to subsection 1 of section 14-09-09.7 of the North Dakota Century Code is created and enacted as follows:

Authorize a rebuttal of the presumption provided in subsection 3 based on the proportionate net income of the obligor and the obligee when the net income of the obligee is at least three times higher than the net income of the obligor.

**SECTION 8. AMENDMENT.** Section 14-09-09.31 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-09.31. Child support exempt from process.** A child support obligation owed to an obligee who is a judgment debtor may not be subject to execution, garnishment, attachment, or other process except to satisfy that child support obligation. This section does not prohibit the public authority from authorizing the state disbursement unit to apply a payment of past-due support owed to an obligee to a child support obligation owed by the same obligee or to another debt being enforced by the North Dakota department of human services that arises out of a public assistance program.

**SECTION 9. AMENDMENT.** Section 14-09-09.33 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-09.33. ~~Judicial offset~~ Offsets of child support.**

1. Notwithstanding section 14-09-09.31, a court may order that a specific amount of past-due child support owed by an obligor to an obligee be offset by an equal amount of past-due child support owed to the obligor by the obligee. An order for an offset is permitted under this subsection only if:
  - a. The proposed offset is limited to past-due child support and does not apply to child support owed in the current month or owed in any future month;
  - b. The proposed offset does not include any past-due child support that has been assigned;

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<sup>79</sup> Section 14-09-09.7 was also amended by section 4 of Senate Bill No. 2336, chapter 149, and section 5 of Senate Bill No. 2336, chapter 149.

- c. Neither party whose past-due child support obligation will be reduced or eliminated by the proposed offset owes past-due child support to another obligee; and
  - d. The opportunity to offset past-due child support under this section has not been used by either party as an incentive to avoid paying child support in the month in which it is due.
2. The order must include a specific finding that the proposed offset serves the best interests of the children to whom the obligor and obligee owe a duty of support.
  3. The public authority may issue an order offsetting past-due child support if neither party objects after being notified of the proposed offset.
  4. Past-due child support owed by an obligor to an obligee may not be offset by past-due child support owed to the obligor by the obligee except as permitted in this section.
4. 5. An obligor's child support obligation for the current month or for a future month may not be offset by past-due child support or other debts owed to the obligor by an obligee unless the court orders the offset as a method of satisfying an overpayment of child support that results from the establishment or reduction of a child support obligation.
  5. 6. An offset of child support under this section is considered a payment of child support by both the obligor and the obligee. A copy of the order for an offset must be provided to the state disbursement unit.
  6. 7. As used in this section, "child support" does not include spousal support.

**SECTION 10.** Section 14-09-09.36 of the North Dakota Century Code is created and enacted as follows:

**14-09-09.36. Fee for child support services.** Any annual fee for child support services imposed by the public authority under section 50-06.3-02 to conform with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.] shall be imposed on the obligee. The amount of the fee in a case which is being enforced under title IV-D must be less, on an annual basis, than the fee in a case which is not being enforced under title IV-D. Upon order of a court, the amount of the fee paid by the obligee may be collected from the obligor as past-due support.

**SECTION 11.** Subsection 10 to section 14-09-25 of the North Dakota Century Code is created and enacted as follows:

10. Unless any party to a child support order objects within ten days of the date of a notice sent by first-class mail to the party's last-known address, the public authority or clerk of court may change the payee of a child support obligation for the current month or a future month upon request of a guardian or other person who has legal custody of the child or children for whom the child support is being paid.

**SECTION 12. AMENDMENT.** Subsection 2 of section 50-09-02.1 of the North Dakota Century Code is amended and reenacted as follows:

2. The state agency shall establish a statewide automated data processing system designed to conform to requirements imposed by or under title IV-D. The state agency must make that system available for the use of clerks of court in carrying out their duties under section 14-09-08.1. The official records of the state regarding all child support amounts owed, collected, and distributed must be maintained in that system. Notwithstanding section 14-08.1-05, any record of a child support obligation that is currently being enforced in another jurisdiction and not by a child support agency, or that is owed by an obligor who is deceased, may be removed indefinitely from the statewide automated data processing system until a request is received from a party to the child support case to restore those records.

**SECTION 13. AMENDMENT.** Paragraph 2 of subdivision g of subsection 1 of section 50-09-08.2 of the North Dakota Century Code is amended and reenacted as follows:

- (2) Certain records held by private entities with respect to individuals who owe or are owed child support, or against or with respect to whom a child support obligation is sought, consisting of:
  - (a) The names and addresses of such individuals and the names and addresses of the employers of such individuals, as appearing in customer records of public utilities, including cellular and wireless telephone service providers, and cable television companies; and
  - (b) Information on assets and liabilities on those individuals held by financial institutions;

**SECTION 14. AMENDMENT.** Section 50-09-08.3 of the North Dakota Century Code is amended and reenacted as follows:

**50-09-08.3. Administrative enforcement in interstate cases.** In acting as the official agency of the state in administering the child support program under title IV-D, the state agency, directly or through agents and county agencies:

1. Shall use high-volume automated administrative enforcement, to the same extent as used in intrastate cases, in response to a request made by another state to enforce a child support order, and shall promptly report the results of such enforcement procedure to the requesting state;
2. May transmit requests, by electronic or other means, to other states for assistance in cases involving enforcement of child support orders which include information provided and intended to enable the receiving state to compare information about the case to information in the data bases of the receiving state, and which constitute a certification:
  - a. Of the amount of arrearages, if any, under the child support order; and
  - b. That procedural due process requirements applicable to the case have been complied with;

3. In cases in which the state agency receives requests made by another state to enforce a child support order, shall not consider that matter a child support case transferred to this state, but may establish a corresponding case based on the other state's request for assistance; and
4. Shall maintain records of:
  - a. The number of requests for assistance made by other states;
  - b. The number of cases in which this state collected support in response to requests made by other states; and
  - c. The amount of support collected.

For purposes of this section, the term "high-volume automated administrative enforcement" means, in interstate cases, on request of another state, the identification, by this state, through automated data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in another state, and the seizure of such assets, by this state, through levy or other appropriate processes.

**SECTION 15. AMENDMENT.** Subsection 6 of section 50-09-08.6 of the North Dakota Century Code is amended and reenacted as follows:

6. In a contest under this section, the court must affirm the action of the state agency to withhold, restrict, or suspend a license unless it finds that the licensee's delinquency or failure to comply with a subpoena, or an existing payment plan was not willful. Upon a showing by the state agency that the licensee has failed to comply with a subpoena, ~~owes is listed on the arrears in an amount greater than three times the licensee's current or most recent monthly child support obligation or five thousand dollars, whichever is less~~ registry, or is not in compliance with an existing payment plan between the licensee and the state agency under this section, the licensee has the burden of proving that the delinquency or failure to comply was not willful.

**SECTION 16. AMENDMENT.** Subsection 4 of section 50-09-32 of the North Dakota Century Code is amended and reenacted as follows:

4. The state agency must develop and maintain a list of the names, addresses, and amounts of past-due support owed by obligors who have been found in contempt of court in this state for failure to comply with a child support order or who have been found guilty of willful failure to pay child support under section 12.1-37-01. Notwithstanding subsections 2 and 3, to the extent permitted by federal law, the state agency must release the list upon request under section 44-04-18. The state agency may remove from the list any obligor who no longer owes past-due support, any obligor who is deceased or whose obligation is being enforced in another jurisdiction, or any obligor whose conviction under section 12.1-37-01 has been expunged.

**SECTION 17.** Section 50-09-37 of the North Dakota Century Code is created and enacted as follows:



**50-09-37. Health insurance data match.** An insurer as defined in section 26.1-36.5-01 shall exchange health insurance information with the state agency for the purpose of establishing or enforcing a medical support obligation. An insurer shall provide the health insurance information required in this section to the state agency or its agent not more frequently than twelve times in a year. The insurer shall provide the information required in this section at no cost if the information is in a readily available structure or format. If the state agency requests the information in a structure or format that is not readily available, the insurer may charge a reasonable fee for providing the information, not to exceed the actual cost of providing the information. The state agency and its agents may not use or disclose any information provided by the insurer under this section except to establish or enforce a child support or medical support obligation, or as otherwise permitted or required by law. An insurer may not be held liable for the release of health insurance information to the state agency or its agents under this section.

**SECTION 18. EMERGENCY.** Section 17 of this Act is declared to be an emergency measure.

Approved April 10, 2007  
Filed April 11, 2007

**CHAPTER 149****SENATE BILL NO. 2336**

(Senators Dever, Fischer, Warner)

(Representative Klemin)

**CHILDREN'S HEALTH INSURANCE AND CARE  
LIABILITY**

AN ACT to create and enact a new subdivision to subsection 1 of section 14-09-09.7 and a new subsection to section 14-09-09.7 of the North Dakota Century Code, relating to liability for children's health insurance coverage or other medical support; to amend and reenact section 14-09-08.10, subsection 3 of section 14-09-08.11, section 14-09-08.15, and subsection 3 of section 14-09-09.10 of the North Dakota Century Code, relating to liability for children's health insurance coverage or other medical support; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 14-09-08.10 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-08.10. Order.** Each order entered under this code for the support of a minor child or the support of a child after majority under section 14-09-08.2 must include a provision for the child's health insurance coverage ~~for that child or other~~ medical support.

- 4- ~~Except as provided in subsection 2, the~~ Responsibility for the child's health insurance coverage or other medical support must be established according to rules adopted by the public authority. To the extent permitted by federal law and rules promulgated by the secretary of the United States department of health and human services, the rules adopted under this section must be based on the income of the obligated parent and include a limitation on the obligation of a low-income parent to provide medical support unless health insurance coverage is available to the parent at no or nominal cost. The order must require the obligor obligated party to provide satisfactory health insurance coverage whenever that coverage is accessible to the child, as defined by the public authority, and available at reasonable cost or becomes accessible and available at reasonable cost.
- 2- ~~If the obligee is an individual with physical custody of the child, the obligee must be required to provide satisfactory health insurance whenever that coverage is available at no or nominal cost.~~

To assist a court in identifying appropriate health insurance coverage under this section, the public authority may publish a list of child-only health insurance policies for children who are not eligible for public health coverage under chapter 50-29. To the extent permitted by federal law and rules promulgated by the secretary of the United States department of health and human services, the rules adopted by the public authority under this section may not impair a child's ability to apply for and receive public health coverage under chapter 50-29.

**SECTION 2. AMENDMENT.** Subsection 3 of section 14-09-08.11 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~Withholding~~ Unless otherwise provided by the public authority in compliance with rules promulgated by the secretary of the United States department of health and human services, withholding required by an order issued under section 14-09-09.15 must be satisfied before any payment is made to the insurer. If the amount remaining is insufficient to pay the obligor's share of premiums for health insurance coverage, the obligor may authorize additional withholding to pay the obligor's share. If the obligor does not authorize additional withholding, and the health insurance coverage will lapse as a result, the employer must promptly inform the public authority of the insufficiency.

**SECTION 3. AMENDMENT.** Section 14-09-08.15 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-08.15. Reasonable cost of health insurance.** For purposes of this chapter, health insurance is considered reasonable in cost if it is available to the obligor on a group basis or through an employer or union, regardless of service delivery mechanism, or as otherwise defined by the public authority in compliance with rules promulgated by the secretary of the United States department of health and human services. The definition of reasonable cost established by the public authority under this section must consider the scope of covered services, the cost of coverage, and the amount of any copayments or deductibles.

<sup>80</sup> **SECTION 4.** A new subdivision to subsection 1 of section 14-09-09.7 of the North Dakota Century Code is created and enacted as follows:

Include consideration of an obligated party's responsibility for health insurance coverage or other medical support under section 14-09-08.10.

<sup>81</sup> **SECTION 5.** A new subsection to section 14-09-09.7 of the North Dakota Century Code is created and enacted as follows:

The guidelines established under this section may include a separate amount of child support for the child's health insurance coverage, reimbursement for public health coverage provided under chapter 50-29, and other medical support.

<sup>82</sup> **SECTION 6. AMENDMENT.** Subsection 3 of section 14-09-09.10 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>80</sup> Section 14-09-09.7 was also amended by section 7 of Senate Bill No. 2129, chapter 148, and section 5 of Senate Bill No. 2336, chapter 149.

<sup>81</sup> Section 14-09-09.7 was also amended by section 7 of Senate Bill No. 2129, chapter 148, and section 4 of Senate Bill No. 2336, chapter 149.

<sup>82</sup> Section 14-09-09.10 was also amended by section 2 of Senate Bill No. 2205, chapter 417.

3. "Child support" means payments for the support of children, including payments for health insurance coverage or other medical support, and combined payments for the support of children and spouses or former spouses, however denominated, if the payment is required by the order of a court or other governmental agency having authority to issue such orders.

**SECTION 7. EFFECTIVE DATE.** Sections 1, 2, and 3 of this Act become effective on the date the department of human services certifies to the legislative council as the effective date of rules adopted to implement this Act.

Approved April 10, 2007  
Filed April 11, 2007

**CHAPTER 150****SENATE BILL NO. 2366**  
(Senators Krauter, Cook)  
(Representatives Froelich, Kerzman)**ADOPTION DECREES AND BIRTH RECORDS**

AN ACT to amend and reenact sections 14-15-17 and 14-15-18 of the North Dakota Century Code, relating to a foreign decree of adoption and an application for a new birth record; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 14-15-17 of the North Dakota Century Code is amended and reenacted as follows:

**14-15-17. Recognition or validation of foreign decree affecting adoption.**

1. A decree of court terminating the relationship of parent and child or establishing the relationship by adoption issued pursuant to due process of law by a court of any other jurisdiction within or outside of the United States must be recognized in this state and the rights and obligations of the parties as to matters within the jurisdiction of this state must be determined as though the decree were issued by a court of this state.
2. a. To obtain a validation of a foreign decree of adoption, the adoptive parent shall provide to the court a petition for validation of foreign adoption, an admission stamp in the adopted individual's passport which indicates that the individual was admitted to the United States with an IR-3 visa, the individual's foreign birth certificate and English translation, the individual's foreign adoption decree and English translation, and a signed affidavit from the agency which states that the foreign adoption is valid and which states the name by which the individual is to be known. The petition for validation of foreign adoption must be signed and verified by the petitioner, filed with the clerk of the court, and state:
  - (1) The date and place of birth of the individual to be adopted, if known;
  - (2) The name to be used for the individual whose foreign adoption decree is being petitioned for validation;
  - (3) The date the petitioner acquired custody or the date of placement of the individual and the name of the foreign country's placing agency;
  - (4) The full name, age, place, and duration of residence of the petitioner; and
  - (5) The marital status of the petitioner, including the date and place of marriage, if married.

- b. Upon a finding that the requirements of subdivision a have been met, the court shall issue a decree of validation of foreign adoption. The clerk of court shall forward a copy of the decree of validation of foreign adoption to the registrar of vital statistics for the issuance of a birth record in accordance with section 14-15-18.

**SECTION 2. AMENDMENT.** Section 14-15-18 of the North Dakota Century Code is amended and reenacted as follows:

**14-15-18. Application for new birth record.** Within thirty days after an adoption decree or decree of validation of foreign adoption becomes final, the clerk of the court shall prepare an application for a birth record in the new name of the adopted individual and forward the application to the appropriate vital statistics office of the place, if known, where the adopted individual was born and forward a copy of the decree to the department of this state for statistical purposes. In the case of the adoption of an individual born outside of the United States, the court may make findings, based on evidence from the petitioner and other reliable state or federal sources, on the date and place of birth and parentage of the adopted individual. These findings must be certified by the court and included with the report of adoption filed with the state registrar of vital statistics pursuant to section 23-02.1-17.

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

Approved April 23, 2007  
Filed April 24, 2007

# EDUCATION

## CHAPTER 151

### HOUSE BILL NO. 1171

(Representatives Kerzman, Froelich, N. Johnson)  
(Senators Krauter, Lyson)

### TRUST LAND SERVICE FEES

AN ACT to amend and reenact section 15-04-23 of the North Dakota Century Code, relating to service fee payments to counties by the board of university and school lands.

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

**SECTION 1. AMENDMENT.** Section 15-04-23 of the North Dakota Century Code is amended and reenacted as follows:

**15-04-23. County services benefiting school trust lands - Payment - Continuing appropriation.** On or before March first of each year, the board of university and school lands shall pay a fee to the board of county commissioners of each county in which the state retains original grant lands if that county has requested payment under this section and included certification of the number of mills levied for county road and bridge purposes. The board of county commissioners shall forward a prorated portion of any fee received under this section to the organized townships in which the original grant lands are located for use in the repair, maintenance, and construction of roads and bridges and shall use the remainder of the fee for the repair, maintenance, and construction of roads and bridges in unorganized townships in which original grant lands are located. The total fees paid under this section ~~may not exceed five percent of the net revenue generated from the original grant lands in that county during the year preceding the payment.~~ For purposes of this section, net revenue means the gross revenue from surface management, less any administrative and operating expenses, but does not include any moneys that must be deposited in a permanent trust fund may not be in an amount greater than the amount of property taxes that would have been payable if the original grant lands in the county had been subject to property tax levies. There is appropriated annually the amounts necessary to pay all fees under this section. Each payment must be made from the trust fund for which the land is held.

Approved April 5, 2007

Filed April 5, 2007

**CHAPTER 152****HOUSE BILL NO. 1030**

(Legislative Council)  
(Higher Education Committee)

**HIGHER EDUCATION FUNDS APPROPRIATION**

AN ACT to amend and reenact section 15-10-12 of the North Dakota Century Code, relating to the appropriation of higher education institutions' special revenue funds; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 15-10-12 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-12. (Effective through June 30, 2007 2009) Board may accept gifts and bequests - Deposit and appropriation of institutional funds.** Subject to the limitations of section 15-10-12.1, the state board of higher education may receive donations, gifts, grants, and bequests offered or tendered to or for the benefit of any institution of higher education under its control or subject to its administration, and all moneys coming into the hands of the board as donations, gifts, grants, and bequests must be used for the specific purpose for which they are donated or given. A special revenue fund, for each institution of higher education under the control of the board or subject to its administration, must be maintained within the state treasury. All rent, interest, or income from land, money, or property, donated or granted by the United States and allocated to specific institutions of higher learning under the terms of the Enabling Act and the Constitution of North Dakota must be deposited in the special revenue fund of each institution and expended in accordance with section 1 of article IX of the Constitution of North Dakota. All other funds, unless restricted by the terms of a grant, donation, or bequest, received by the institutions from federal, state, and local grants and contracts, indirect cost recoveries, tuition, special student fees, room and board fees and other auxiliary enterprise fees, student activity fees, continuing education program fees, internal service fund revenues, and all other revenues must be deposited in the institution special revenue funds. The state treasurer shall immediately transfer the funds deposited in the special revenue funds to institution accounts in the Bank of North Dakota. Biennial estimates of revenue and expenditures of the other funds by source of funds must be presented at the same time biennial budget requests for appropriations from the special revenue fund and state general fund are prepared and submitted to the office of the budget. Payments from each institution's general fund appropriation must be made in amounts as may be necessary for the operation and maintenance of each institution. The funds in the institution accounts are appropriated on a continuing basis to the state board of higher education. All such appropriations are subject to proration in the same manner as other appropriations are prorated if insufficient funds are available to meet expenditures from the general fund. Sinking funds for the payment of interest and principal of institutional revenue bonds must be deposited pursuant to section 15-55-06.

**(Effective after June 30, 2007 2009) Board may accept gifts and bequests - Deposit of funds.** The state board of higher education may, subject to the limitations of section 15-10-12.1, receive donations, gifts, grants, and bequests offered or tendered to or for the benefit of any institution of higher education under its



control or subject to its administration, and all moneys coming into the hands of the board as donations, gifts, grants, and bequests must be used for the specific purpose for which they are donated or given. A special revenue fund, for each institution of higher education under the control of the board or subject to its administration, must be maintained within the state treasury and all institutional income from tuition collections must be placed in the special fund for the use of the institution for which the money was raised. All rent, interest, or income from land, money, or property, donated or granted by the United States and allocated to specific institutions of higher learning under the terms of the Enabling Act and the Constitution of North Dakota must be deposited in the special revenue fund of each institution and expended in accordance with section 1 of article IX of the Constitution of North Dakota. Moneys in the special revenue fund are subject to legislative appropriations. All other funds, unless restricted by the terms of a grant, donation, or bequest, received by the institutions from federal, state, and local grants and contracts, indirect cost recoveries, special student fees, room and board fees and other auxiliary enterprise fees, student activity fees, continuing education program fees, internal service fund revenues, and all other revenues must be deposited in the institution special revenue funds. The state treasurer shall immediately transfer the funds deposited in the special revenue funds to institution accounts in the Bank of North Dakota. Biennial estimates of revenue and expenditures of the other funds by source of funds must be presented at the same time biennial budget requests for appropriations from the special revenue fund and state general fund are prepared and submitted to the office of the budget. Payments from each institution's general fund appropriation must be made in amounts as may be necessary for the operation and maintenance of each institution, except that at the close of the biennium the balance of funds not paid from the general fund appropriation must be deposited in the special revenue funds of the institutions. All such appropriations are subject to proration in the same manner as other appropriations are prorated if insufficient funds are available to meet expenditures from the general fund. Sinking funds for the payment of interest and principal of institutional revenue bonds must be deposited pursuant to section 15-55-06.

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

Approved March 7, 2007  
Filed March 8, 2007

**CHAPTER 153****SENATE BILL NO. 2344**

(Senators G. Lee, Klein)  
(Representatives Belter, Carlson, DeKrey)

**EDUCATION FOOD AND CATERING SERVICES**

AN ACT to amend and reenact sections 15-10-17.4 and 15.1-35-08 of the North Dakota Century Code, relating to the provision of food and catering services by institutions of higher education and school districts.

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

**SECTION 1. AMENDMENT.** Section 15-10-17.4 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-17.4. Contract - Preparation and provision of meals - Policy.**

1. An institution under the control of the state board of higher education may enter a contract to prepare and provide meals, snacks, or other food services for persons or programs not affiliated with the institution and may provide catering services for an event if the event is organized predominantly for persons affiliated with the institution, the event is held predominantly for persons enrolled in the institution, or the event is held under the auspices of the institution, provided the institution first establishes a policy regarding such ~~contracts~~ services and specifically ~~addressing~~ addresses issues related to competition with private sector entities.
2. The limitations provided under subsection 1 do not apply to an institution under the control of the state board of higher education if no private sector entity located in the same city as the institution is capable and willing to meet the facility or personnel requirements necessary to:
  - a. Prepare and provide the meals, snacks, or other food services for a specific event; or
  - b. Provide the catering services for a specific event.
3. An institution under the control of the state board of higher education may not advertise to the general public its willingness to provide ~~meals, snacks, or other food services for persons or programs not affiliated with the institution~~ the services permitted under this section.
4. Nothing in this section may be construed to limit the activities of a private sector entity that provides meals, snacks, or other food services to an institution of higher education under the provisions of a contract.

**SECTION 2. AMENDMENT.** Section 15.1-35-08 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-35-08. Contract - Preparation and provision of meals.**

1. The board of a school district may prepare and provide meals, snacks, or other food services for any events or programs occurring on or off school property, provided the events or programs:
  - a. Are hosted by or under the auspices of the school district; or
  - b. Involve child care centers participating in the Child and Adult Care Food Program [Pub. L. 108-265; 118 Stat. 729; 42 U.S.C. 1766 et seq.].
2. ~~a.~~ The board of a school district may enter into a contract to prepare and provide meals, snacks, or other food services for persons or programs ~~not affiliated with the school district~~ other than those in subsection 1, provided any person that wishes to enter a contract with the board under this ~~section~~ subdivision first demonstrates to the satisfaction of the board that there are no private entities able and willing to enter into such a contract.
2. ~~b.~~ The board of a school district may not advertise to the general public its willingness to provide meals, snacks, or other food services ~~for persons or programs not affiliated with the district~~ under this section.
3. ~~An institution under the control of the state board of higher education may not advertise to the general public its willingness to provide meals, snacks, or other food services for persons or programs not affiliated with the institution.~~

Approved May 4, 2007  
Filed May 4, 2007

## CHAPTER 154

### HOUSE BILL NO. 1461

(Representatives Skarphol, Monson)  
(Senators Grindberg, Robinson, Wardner)

## HIGHER EDUCATION INFORMATION TECHNOLOGY SERVICES

AN ACT to create and enact two new sections to chapter 15-10 and a new subsection to section 54-35-15.2 of the North Dakota Century Code, relating to higher education information technology, telecommunications and information services competition, and powers and duties of the information technology committee; and to amend and reenact sections 54-59-05, 54-59-09, and 54-59-11 of the North Dakota Century Code, relating to the information technology department, information technology standards, and information technology plans.

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

**SECTION 1.** A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

#### **Higher education information technology - Board duties - Reports.**

1. The state board of higher education shall manage and regulate information technology planning and services for institutions under its control, including:
  - a. Development of information technology policies, standards, and guidelines in coordination with the information technology department.
  - b. Implementation of a process for project management oversight and reporting.
  - c. Integration of higher education information technology planning and reporting with the board's strategic planning process and annual performance and accountability report required by section 15-10-14.2.
  - d. Participation in internet2 or other advanced higher education or research-related networking projects as provided in section 54-59-08.
  - e. Development of an annual report concerning higher education information technology planning and services.
2. The state board of higher education shall collaborate with the information technology department to coordinate higher education information technology planning with statewide information technology planning.

3. The state board of higher education shall provide advice to the information technology department regarding the development of policies, standards, and guidelines relating to access to or use of wide area network services as provided by section 54-59-09.
4. The state board of higher education shall present information regarding higher education information technology planning, services, and major projects to the information technology committee on request of the committee.

**SECTION 2.** A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

**Telecommunications and information services competition prohibited - Report.**

1. The northern tier network, part of a national research network infrastructure, serves entities within and outside this state. The North Dakota university system may use the northern tier network infrastructure only for the purpose of supporting the research and education missions of the North Dakota university system. The North Dakota university system may not use the northern tier network infrastructure for traditional internet, voice, video, or other telecommunications services beyond those required for research networks.
2. The North Dakota university system or any entity associated with the university system may not resell any portion of the northern tier network infrastructure to nonuniversity entities other than research collaborators.
3. The northern tier network may not replace any wide area network services to any city, county, or school district which are provided by the information technology department under section 54-59-08.
4. The North Dakota university system shall provide a comprehensive biennial report of northern tier network activities for the 2007-09 biennium and must submit to a biennial audit of the northern tier network activities beginning with the 2009-11 biennium.

<sup>83</sup> **SECTION 3.** A new subsection to section 54-35-15.2 of the North Dakota Century Code is created and enacted as follows:

Receive information from the state board of higher education regarding higher education information technology planning, services, and major projects.

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<sup>83</sup> Section 54-35-15.2 was also amended by section 10 of House Bill No. 1021, chapter 21, section 2 of Senate Bill No. 2037, chapter 491, and section 1 of Senate Bill No. 2038, chapter 490.

<sup>84</sup> **SECTION 4. AMENDMENT.** Section 54-59-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-59-05. Powers and duties of department.** The department:

1. Shall provide, supervise, and regulate information technology of all executive branch state entities, excluding the institutions under the control of the board of higher education.
2. Shall provide network services in a way that ensures the network requirements of a single entity do not adversely affect the functionality of the whole network, facilitates open communications with the citizens of the state, minimizes the state's investment in human resources, accommodates an ever-increasing amount of traffic, supports rapid detection and resolution of problems, protects the network infrastructure from damage and security breaches, provides for the aggregation of data, voice, video, and multimedia into a statewide transport mechanism or backbone, and provides for the network support for the entity to carry out its mission.
3. May review and approve additional network services that are not provided by the department.
4. May purchase, finance the purchase, or lease equipment, software, or implementation services or replace, including by trade or resale, equipment or software as may be necessary to carry out this chapter. An agreement to finance the purchase of software, equipment, or implementation services may not exceed a period of five years. The department shall submit any intended financing proposal for the purchase of software, equipment, or implementation services under this subsection, which is in excess of one million dollars, to the budget section of the legislative council or the legislative assembly before executing a financing agreement. If the budget section or the legislative assembly does not approve the execution of a financing agreement, the department may not proceed with the proposed financing arrangement. The department may finance the purchase of software, equipment, or implementation services only to the extent the purchase amount does not exceed seven and one-half percent of the amount appropriated to the department during that biennium.
5. Each executive branch agency or institution, excluding the institutions under the control of the board of higher education, shall submit to the department, in accordance with guidelines established by the department, a written request for the lease, purchase, or other contractual acquisition of information technology. The department shall review requests for conformance with the requesting entity's information technology plan and compliance with statewide policies and standards. If the request is not in conformance or compliance, the department may disapprove the request or require justification for the departure from the plan or statewide policy or standard.

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<sup>84</sup> Section 54-59-05 was also amended by section 3 of Senate Bill No. 2037, chapter 491.

6. Shall provide information technology, including assistance and advisory service, to the executive, legislative, and judicial branches. If the department is unable to fulfill a request for service from the legislative or judicial branch, the information technology may be procured by the legislative or judicial branch within the limits of legislative appropriations.
7. Shall request information on or review information technology, applications, system development projects, and application development projects of executive branch agencies.
8. Shall study emerging technology and evaluate its impact on the state's system of information technology.
9. Shall develop guidelines for reports to be provided by each agency of the executive branch agency, institution, or department, legislative, and judicial branches, excluding the institutions under the control of the board of higher education, and agencies of the judicial and legislative branches on information technology in those entities.
10. Shall collaborate with the state board of higher education on guidelines for reports to be provided by institutions under control of the state board of higher education on information technology in those entities.
11. Shall review the information technology management of executive branch agencies or institutions.
- ~~44-~~ 12. Shall perform all other duties necessary to carry out this chapter.
- ~~42-~~ 13. May provide wide area network services to a state agency, city, county, school district, or other political subdivision of this state. The information technology department may not provide wide area network service to any private, charitable, or nonprofit entity except the information technology department may continue to provide the wide area network service the department provided to the private, charitable, and nonprofit entities receiving services from the department on January 1, 2003. The department shall file with the state auditor before September 1, 2003, a description of the wide area network service the department provided to each private, charitable, and nonprofit entity receiving services from the department on January 1, 2003.
- ~~43-~~ 14. Shall assure proper measures for security, firewalls, and internet protocol addressing at the state's interface with other facilities.
- ~~44-~~ 15. Notwithstanding subsection ~~42~~ 13, ~~the department~~ may provide wide area network services for a period not to exceed four years to an occupant of a technology park associated with an institution of higher education or to a business located in a business incubator associated with an institution of higher education.

<sup>85</sup> **SECTION 5. AMENDMENT.** Section 54-59-09 of the North Dakota Century Code is amended and reenacted as follows:

**54-59-09. Information technology standards.** Based on information from state agencies and institutions, the department and the office of management and budget shall develop statewide information technology policies, standards, and guidelines. The policies, standards, and guidelines must recognize the uniqueness of certain agencies and state which agencies are included or exempted from the policies, standards, and guidelines. The policies, standards, and guidelines must be reviewed by the state information technology advisory committee. Unless an exemption is granted by the chief information officer, each executive branch state agency and institution, excluding the institutions under the control of the board of higher education ~~with respect to academic and research uses of information technology~~, shall comply with the policies and standards developed by the department and the office of management and budget. Unless an exemption is granted by the chief information officer, each entity receiving wide area network services provided by the department shall comply with the policies and standards developed by the department with respect to access to or use of wide area network services.

<sup>86</sup> **SECTION 6. AMENDMENT.** Section 54-59-11 of the North Dakota Century Code is amended and reenacted as follows:

**54-59-11. Information technology plans.** Each executive branch state agency or institution, ~~including~~ excluding the institutions under the control of the board of higher education, shall prepare an information technology plan, subject to approval by the department. The plan must be submitted to the department by July fifteenth of each even-numbered year. The plan must be prepared based on guidelines developed by the department; must provide the information technology goals, objectives, and activities of the entity for the current biennium and the next two bienniums; and must include information regarding the information technology assets owned, leased, or employed by the entity. Each entity required to file a plan shall provide interim updates to its plan if major information technology changes occur which affect its plan. The department shall review each entity's plan for compliance with statewide information technology policies and standards and may require an entity to change its plan to comply with statewide policies or standards or to resolve conflicting directions among plans. Agencies of the judicial and legislative branches shall file their information technology plans with the department by July fifteenth of each even-numbered year. Each state entity shall prepare its budget request for the next biennium based on its information technology plan. The agency's budget request and the governor's budget recommendation must include supporting information describing in detail how the information technology plan relates to the budget request and recommendation. Any budget adjustment by the budget office must include the corresponding change to the plan. Based on the plans, the department shall prepare a statewide information technology plan and distribute copies of that plan to members of the legislative assembly as requested by the

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<sup>85</sup> Section 54-59-09 was also amended by section 4 of Senate Bill No. 2038, chapter 490.

<sup>86</sup> Section 54-59-11 was also amended by section 4 of Senate Bill No. 2037, chapter 491.



legislative council or its designee. The statewide information technology plan must be developed with emphasis on long-term strategic goals and objectives.

Approved April 11, 2007

Filed April 13, 2007

**CHAPTER 155****SENATE BILL NO. 2379**

(Senators J. Lee, Krauter, Warner)  
(Representatives Delmore, Price, Svedjan)

**NURSING EDUCATION CONSORTIUM**

AN ACT to provide for a nursing education consortium to establish a mobile clinical nursing simulation laboratory; to provide statements of legislative intent; to provide for a report to the legislative council; to provide an appropriation; and to provide a continuing appropriation.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:****SECTION 1. Nursing education consortium - Continuing appropriation.**

1. The university of North Dakota college of nursing shall establish and administer a nursing education consortium for the purpose of addressing common concerns in nursing education which produce obstacles in meeting the state's current and future nursing needs, with a focus on the specific needs of rural communities.
2. The consortium membership must include representation of the university of North Dakota college of nursing, the university of North Dakota center for rural health, and the board of nursing. In addition, each nursing program in this state which is approved by the board of nursing and each nursing program with approval pending which is located in this state must be invited to have representation in the consortium. The consortium members may invite interested persons to join the consortium membership or to participate in consortium activities. Interested persons may include the North Dakota nurses association nursing practice council leadership team; North Dakota hospital association; workforce partners, including job service North Dakota, the department of commerce division of workforce development, rural leadership of North Dakota, and the North Dakota workforce development council; employer partners; and other interested public and private parties. The dean of the university of North Dakota college of nursing shall serve as chairman of the consortium from July 1, 2007, through December 31, 2009, during which the dean shall report to the legislative council. After 2009, the chairman must be chosen by the members.
3. If the consortium secures nonstate funds to cover the capital costs of a mobile clinical nursing simulation laboratory program, the consortium may establish a mobile clinical nursing simulation laboratory program to travel the state and provide clinical education for nursing students of nursing education programs in the state and provide clinical education on current and emerging approaches to nursing excellence to medical facility staff.
4. If the consortium establishes a mobile clinical nursing simulation laboratory program, the consortium shall establish a strategic plan for the ongoing activities of the simulation laboratory program, including

goals and benchmarks for the implementation of the simulation laboratory program.

5. The consortium may contract with a third party in conducting the duties of the consortium and may seek, receive, and accept from any source aid or contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of the consortium. Any money received by the consortium as gifts, grants, or donations is appropriated as a continuing appropriation for the purpose of funding the simulation laboratory program and the activities of the consortium.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much of the sum as may be necessary, to the university of North Dakota for the purpose of funding the costs of a simulation laboratory program under section 1 of this Act, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 3. STATE BOARD OF HIGHER EDUCATION - LEGISLATIVE INTENT.** It is the intent of the legislative assembly that the state board of higher education establish and implement a policy and procedure for institutions of higher education under the control of the board to participate in systemwide initiatives.

**SECTION 4. COMPETITIVE GRANT ELIGIBILITY - LEGISLATIVE INTENT.** It is the intent of the legislative assembly that the nursing education consortium apply for public and private grants to assist in financing section 1 of this Act and that state agencies interpret grant application guidelines broadly to allow the nursing education consortium to be eligible to apply for grants.

Approved May 4, 2007  
Filed May 4, 2007

**CHAPTER 156****SENATE BILL NO. 2127**

(Education Committee)

(At the request of the Division of Independent Study)

**CENTER FOR DISTANCE EDUCATION**

AN ACT to amend and reenact sections 15-19-01, 15-19-02, 15-19-03, 15-19-04, 15-19-06, and 15-19-08, subsection 11 of section 15-39.1-04, section 15.1-21-02.1, subsections 1 and 2 of section 15.1-23-17, and subsection 8 of section 54-59-18 of the North Dakota Century Code, relating to renaming the division of independent study the center for distance education.

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

**SECTION 1. AMENDMENT.** Section 15-19-01 of the North Dakota Century Code is amended and reenacted as follows:

**15-19-01. ~~Correspondence~~ Distance education courses - Establishment - Enrollment of students - Courses of instruction.** The state shall provide ~~correspondence~~ distance education courses through the ~~division of independent study~~ center for distance education under the following provisions:

1. A complete curriculum by ~~correspondence~~ distance education which has been specifically determined by the superintendent of public instruction as proper and suitable for instruction under ~~correspondence~~ distance education methods, such determination and approval to be made not less than once in each school year, must be maintained upon the campus of one of the state institutions of higher education.
2. Unless specifically excused in writing upon the course application forms by the superintendent or an administrator of the school approving the enrollment application, or as provided in subsection 5, all students under the age of sixteen taking advantage of the provisions of this chapter must be required to attend their local district schools and to study their ~~correspondence~~ distance education lessons under the supervision of a local supervisor. If not required to attend their local schools, their work may be done at a place designated by the state director. If in attendance at a local school, students must be supplied with desk space in their respective school without charge and shall attend school regularly and be under the same disciplinary supervision of the teachers as the other school students.
3. The ~~division of independent study~~ center for distance education may provide services to persons who are not North Dakota residents.
4. ~~Correspondence~~ Distance education students shall pay for books and materials used by them, postage required to mail reports to the ~~division~~ center, and other fees as may be prescribed by the state director.
5. Students exempt from the compulsory school attendance laws pursuant to subdivision e of subsection 1 of section 15.1-20-02 may enroll in ~~correspondence~~ distance education courses offered through the

~~division of independent study center for distance education~~. These students may study their ~~correspondence distance education~~ lessons in their learning environment under the supervision of a parent. The tests for the ~~correspondence distance education~~ study must be administered by an individual who is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board and employed either by the public school district in which the parent resides or a state-approved private or nonpublic school.

**SECTION 2. AMENDMENT.** Section 15-19-02 of the North Dakota Century Code is amended and reenacted as follows:

**15-19-02. Administration - Director of ~~division of independent study center for distance education~~ - Appointment and duties.** The program of and all activities related to the ~~division of independent study center for distance education~~ are the responsibility of and under the supervision of the educational technology council. The educational technology council shall hire a state director of the ~~division of independent study center for distance education~~ who must be classified under the state personnel merit system. The director shall carry out the director's responsibilities in the administration of the ~~division of independent study center for distance education~~ in the manner approved by the educational technology council.

**SECTION 3. AMENDMENT.** Section 15-19-03 of the North Dakota Century Code is amended and reenacted as follows:

**15-19-03. Duties of superintendents of schools - Authorization of enrollments.** All applications for enrollment of persons under the age of sixteen years must be approved by the superintendent or an administrator of a school in the district prior to acceptance of enrollment by the ~~division of independent study center for distance education~~. All applications for enrollment of persons under the age of sixteen not residing in a high school district must be approved by the county superintendent of schools prior to the acceptance of such enrollment.

**SECTION 4. AMENDMENT.** Section 15-19-04 of the North Dakota Century Code is amended and reenacted as follows:

**15-19-04. Duty of superintendent - Advertising.** The superintendent or an employee of the department of public instruction designated by the superintendent shall ensure that the courses offered by the ~~division of independent study center for distance education~~ meet state content standards and shall monitor compliance with sections 15.1-18-02 and 15.1-18-03. The ~~division of independent study center for distance education~~ may advertise its ~~correspondence distance education~~ program.

**SECTION 5. AMENDMENT.** Section 15-19-06 of the North Dakota Century Code is amended and reenacted as follows:

**15-19-06. Special funds - Deposit of collections - Transfers from general fund appropriations.**

1. A special operating fund for the ~~division of independent study center for distance education~~ must be maintained within the state treasury and all income and fees collected by the ~~division of independent study center for distance education~~ from any source must be remitted monthly by the director to the state treasurer and credited to the special operating fund. All expenditures from the fund must be within the limits of legislative

appropriations and must be made upon vouchers, signed and approved by the technology director appointed by the educational technology council. Upon approval of the vouchers by the office of the budget, warrant-checks must 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 center for distance education~~ general fund appropriation to the special operating fund whenever its balance falls so low as to require supplementation.

2. The educational technology council may establish an administrative operational fund, of not to exceed ten thousand dollars, out of the special operating fund for the ~~division of independent study center for distance education~~. The administrative operational fund must be deposited in the Bank of North Dakota and may be drawn upon by the state director of the ~~division of independent study center for distance education~~ for the payment of necessary expenses in the administration and operation of the ~~division of independent study center for distance education~~ within the limits and rules prescribed by the educational technology council. The director shall submit a full, minute, and itemized statement of every expenditure made during the month to the council in accordance with the rules adopted by the council, and thereafter the council may periodically authorize additional transfers to the administrative operational fund, but the balance in the fund may never exceed ten thousand dollars, and any unencumbered balance at the end of any biennium must revert to the state treasury. The administrative operational fund may not be used to pay salaries or expenses of the director.
3. The educational technology council may establish a scholarship fund to provide financial grants to students enrolled in courses offered through the ~~division of independent study center for distance education~~. The scholarship fund may consist only of those funds specifically appropriated by the legislative assembly and property received by the council or the ~~division of independent study center for distance education~~ as a gift, devise, or bequest. Any gift, devise, or bequest of property received by the council or ~~division of independent study center for distance education~~ which is designated by the council and donor for the scholarship fund must be deposited in the scholarship fund at the Bank of North Dakota. The state director of the ~~division of independent study center for distance education~~ may draw only on the interest earned by the scholarship fund for the award of scholarships within the limits and rules adopted by the educational technology council. The interest earned by the scholarship fund is appropriated to the ~~division of independent study center for distance education~~.

**SECTION 6. AMENDMENT.** Section 15-19-08 of the North Dakota Century Code is amended and reenacted as follows:

**15-19-08. Correspondence Distance education work.** The amount of money appropriated by the legislative assembly for ~~correspondence distance education~~ work for a biennium, or so much thereof as may be necessary, must be expended first for work by ~~correspondence distance education~~.

<sup>87</sup> **SECTION 7. AMENDMENT.** Subsection 11 of section 15-39.1-04 of the North Dakota Century Code is amended and reenacted as follows:

11. "Teacher" means:

- a. All persons licensed by the education standards and practices board who are contractually employed in teaching, supervisory, administrative, or extracurricular services by a state institution, special education unit, school board, or other governing body of a school district of this state, including superintendents, assistant superintendents, business managers, principals, assistant principals, and special teachers. For purposes of this subdivision, "teacher" includes persons contractually employed by one of the above employers to provide teaching, supervisory, administrative, or extracurricular services to a separate state institution, state agency, special education unit, school board, or other governing body of a school district of this state under a third-party contract.
- b. The superintendent of public instruction, assistant superintendents of public instruction, county superintendents, assistant superintendents, supervisors of instruction, the professional staff of the department of career and technical education, the professional staff of the ~~division of independent study~~ center for distance education, the executive director and professional staff of the North Dakota education association who are members of the fund on July 1, 1995, the professional staff of an interim school district, and the professional staff of the North Dakota high school activities association who are members of the fund on July 1, 1995.
- c. The executive director and professional staff of the North Dakota council of school administrators who are members of the fund on July 1, 1995, and licensed staff of teachers centers, but only if the person was previously a member of and has credits in the fund.
- d. Employees of institutions under the control and administration of the state board of higher education who are members of the fund on July 16, 1989.

<sup>88</sup> **SECTION 8. AMENDMENT.** Section 15.1-21-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-21-02.1. High school coursework requirements.** Before a school district, a nonpublic high school, or the ~~North Dakota division of independent study~~ center for distance education issues a high school diploma to a student, the student must have successfully completed at least twenty-one units of high school coursework from the minimum required curriculum offerings established by section 15.1-21-02.

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<sup>87</sup> Section 15-39.1-04 was also amended by section 1 of Senate Bill No. 2046, chapter 157, and section 2 of Senate Bill No. 2046, chapter 157.

<sup>88</sup> Section 15.1-21-02.1 was also amended by section 1 of Senate Bill No. 2309, chapter 177.

**SECTION 9. AMENDMENT.** Subsections 1 and 2 of section 15.1-23-17 of the North Dakota Century Code are amended and reenacted as follows:

1. A child's school district of residence, an approved nonpublic high school, or the ~~North Dakota division of independent study center for distance education~~ may issue a high school diploma to a child who, through home education, has met the issuing entity's requirements for high school graduation provided the child's parent submits to the issuing entity a description of the course material covered in each high school subject, a description of the course objectives and how the objectives were met, and a transcript of the child's performance in grades nine through twelve.
2. In the alternative, a high school diploma may be issued by the child's school district of residence, an approved nonpublic high school, or the ~~North Dakota division of independent study center for distance education~~ provided the child, through home education, has completed at least twenty-one units of high school coursework from the minimum required curriculum offerings established by law for public and nonpublic schools and the child's parent or legal guardian submits to the issuing entity a description of the course material covered in each high school subject, a description of the course objectives and how the objectives were met, and a transcript of the child's performance in grades nine through twelve. The issuing entity may indicate on a diploma issued under this subsection that the child was provided with home education.

**SECTION 10. AMENDMENT.** Subsection 8 of section 54-59-18 of the North Dakota Century Code is amended and reenacted as follows:

8. Hire the director of the ~~division of independent study center for distance education~~.

Approved March 2, 2007  
Filed March 2, 2007



## CHAPTER 157

### SENATE BILL NO. 2046

(Government and Veterans Affairs Committee)  
(At the request of the Teachers' Fund for Retirement)

### TFFR CONTRIBUTIONS AND BENEFITS

AN ACT to create and enact two new subsections to section 15-39.1-04 of the North Dakota Century Code, relating to definitions under the teachers' fund for retirement; to amend and reenact subsection 9 of section 15-39.1-04, subsection 1 of section 15-39.1-09, section 15-39.1-10, subdivision c of subsection 1 of section 15-39.1-10.3, sections 15-39.1-10.6, 15-39.1-11, 15-39.1-12, and 15-39.1-15, subsection 1 of section 15-39.1-19.1, sections 15-39.1-19.2 and 15-39.1-20, and subsection 2 of section 15-39.1-33 of the North Dakota Century Code, relating to the incorporation of federal law changes, employer contributions and service credit purchases, eligibility for and determination of benefits, vesting, early retirement, returning to teaching, and accepting a refund from the fund under the teachers' fund for retirement; to provide for application; to provide an appropriation; to provide an effective date; and to provide an expiration date.

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

<sup>89</sup> **SECTION 1. AMENDMENT.** Subsection 9 of section 15-39.1-04 of the North Dakota Century Code is amended and reenacted as follows:

9. "Salary" means a member's earnings in eligible employment under this chapter for teaching, supervisory, administrative, and extracurricular services during a school year reported as salary on the member's federal income tax withholding statements plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 132(f), 401(k), 403(b), 414(h), or 457 in effect on ~~August July 1, 2005~~ July 1, 2007. "Salary" includes bonus amounts paid to members for performance, retention, experience, and other service-related bonuses, unless amounts are conditioned on or made in anticipation of an individual member's retirement or termination. The annual salary of each member taken into account in determining benefit accruals and contributions may not exceed the annual compensation limits established under 26 U.S.C. 401(a)(17)(B) in effect on ~~August July 1, 2005~~ July 1, 2007, as adjusted for increases in the cost of living in accordance with 26 U.S.C. 401(a)(17)(B) in effect on ~~August July 1, 2005~~ July 1, 2007. A salary maximum is not applicable to members whose participation began before July 1, 1996. "Salary" does not include:
  - a. Fringe benefits or side, nonwage, benefits that accompany or are in addition to a member's employment, including insurance programs, annuities, transportation allowances, housing

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<sup>89</sup> Section 15-39.1-04 was also amended by section 2 of Senate Bill No. 2046, chapter 157, and section 7 of Senate Bill No. 2127, chapter 156.

allowances, meals, lodging, or expense allowances, or other benefits provided by a member's employer.

- b. Insurance programs, including medical, dental, vision, disability, life, long-term care, workforce safety and insurance, or other insurance premiums or benefits.
- c. Payments for unused sick leave, personal leave, vacation leave, or other unused leave.
- d. Early retirement incentive pay, severance pay, or other payments conditioned on or made in anticipation of retirement or termination.
- e. Teacher's aide pay, referee pay, busdriver pay, or janitorial pay.
- f. Amounts received by a member in lieu of previously employer-provided benefits or payments that are made on an individual selection basis.
- g. Recruitment bonuses.
- h. Other benefits or payments not defined in subdivisions a through g which the board determines to be ineligible teachers' fund for retirement salary.

<sup>90</sup> **SECTION 2.** Two new subsections to section 15-39.1-04 of the North Dakota Century Code are created and enacted as follows:

"Tier one member" means a teacher who has credit in the system on July 1, 2008, and has not taken a refund pursuant to section 15-39.1-20 after June 30, 2008.

"Tier two member" means a teacher who is not a tier one member.

<sup>91</sup> **SECTION 3. AMENDMENT.** Subsection 1 of section 15-39.1-09 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in subsection 2 of section 15-39.1-10.3 and subsection 3 by law, every teacher is a member of the fund and must be assessed upon the teacher's salary seven and seventy-five hundredths percent per annum, which must be deducted, certified, and paid monthly to the fund by the disbursing official of the governmental body by which the teacher is employed. Every Except as otherwise provided by law, every governmental body employing a teacher shall pay to the fund ~~seven~~ ~~eight~~ and ~~seventy-five~~ twenty-five hundredths percent per annum of the salary of each teacher employed by it. The disbursing official of the governmental body shall certify the

<sup>90</sup> Section 15-39.1-04 was also amended by section 1 of Senate Bill No. 2046, chapter 157, and section 7 of Senate Bill No. 2127, chapter 156.

<sup>91</sup> Section 15-39.1-09 was also amended by section 1 of House Bill No. 1078, chapter 483.

governmental body payments and remit the payments monthly to the fund.

**SECTION 4. AMENDMENT.** Section 15-39.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-10. Eligibility for normal retirement benefits.**

1. The following members are eligible to receive monthly lifetime normal retirement benefits under this section:
  - a. All tier one members who have earned three years of teaching service credit and who have attained the age of sixty-five years.
  - b. All tier one members who have earned three years of teaching service credit and who have a combined total of years of service credit and years of age which equals or exceeds eighty-five.
  - c. All tier two members who have earned five years of teaching service credit and who have attained the age of sixty-five years.
  - d. All tier two members who have earned five years of teaching service credit and who have a combined total of years of service credit and years of age which equals or exceeds ninety.
2. The amount of retirement benefits is two percent of the final average monthly salary of the member multiplied by the number of years of credited service. For the purposes of this subsection, final average monthly salary for a tier one member means one thirty-sixth of the total of the member's highest annual salaries earned between July first of a calendar year and June thirtieth of the subsequent calendar year for any three years of service credit under the fund. For purposes of this subsection, final average monthly salary for a tier two member means one sixtieth 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 five years of service credit under the fund.
3. Notwithstanding any other provision of this section, no member who retired on July 1, 1993, or after and is eligible to receive benefits under former chapter 15-39, chapter 15-39.1, or section 15-39.2-02, may receive benefits which are less than:
  - a. Ten dollars per month per year of teaching to twenty-five years.
  - b. Fifteen dollars per month per year of teaching over twenty-five years.
4. Retirement benefits must begin no later than April first of the calendar year following the year the member attains age seventy and one-half or April first of the calendar year following the year the member terminates covered employment, whichever is later. Payments must be made over a period of time which does not exceed the life expectancy of the member or the joint life expectancy of the member and the beneficiary. Payment of minimum distributions must be made in accordance with section 401(a)(9) of the Internal Revenue Code in effect on ~~August~~

July 1, ~~2005~~ 2007, and the regulations issued under that section, as applicable to governmental plans.

**SECTION 5. AMENDMENT.** Subdivision c of subsection 1 of section 15-39.1-10.3 of the North Dakota Century Code is amended and reenacted as follows:

- c. Pursuant to rules adopted by the board, a teacher who has service credit in the fund and in any number of the alternate plans described in paragraphs 1 and 2 of subdivision a is entitled to benefits under this chapter.
- (1) A ~~teacher~~ tier one member may elect to have benefits calculated using the benefit formula in subsection 2 of section 15-39.1-10 under either of the following calculation methods:
- (~~1~~) (a) Using the three highest certified fiscal year salaries of this plan in the computation of final average salary and all service credit earned in this plan; or
- (~~2~~) (b) Using the three highest certified fiscal year salaries of this plan combined with the alternate plan in the computation of final average salary and service credit not to exceed one year in any fiscal year when combined with the service credit earned in the alternate retirement plan.
- (2) A tier two member may elect to have benefits calculated using the benefit formula in subsection 2 of section 15-39.1-10 under either of the following calculation methods:
- (a) Using the five highest certified fiscal year salaries of this plan in the computation of final average salary and all service credit earned in this plan; or
- (b) Using the five highest certified fiscal year salaries of this plan combined with the alternate plan in the computation of final average salary and service credit not to exceed one year in any fiscal year when combined with the service credit earned in the alternate retirement plan.

**SECTION 6. AMENDMENT.** Section 15-39.1-10.6 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-10.6. Benefit limitations.** Benefits with respect to a member participating under former chapter 15-39 or chapter 15-39.1 or 15-39.2 may not exceed the maximum benefits specified under section 415 of the Internal Revenue Code [26 U.S.C. 415] in effect on ~~August~~ July 1, ~~2005~~ 2007, for governmental plans. ~~This section does not constitute an election under section 415(b)(10)(C) of the Internal Revenue Code [26 U.S.C. 415(b)(10)(C)] in effect on August 1, 2005.~~

**SECTION 7. AMENDMENT.** Section 15-39.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-11. Vesting of rights.** ~~When any~~ A tier one member who has paid assessments and earned three years of service credit in this state, that member has a vested right to a retirement annuity but is not entitled to payments under this chapter until the member meets the requirements set forth in section 15-39.1-10 or 15-39.1-12. ~~When a tier two member has paid assessments and earned five years of service credit in this state, that member has a vested right to a retirement annuity but is not entitled to payments under this chapter until the member meets the requirements set forth in section 15-39.1-10 or 15-39.1-12.~~

**SECTION 8. AMENDMENT.** Section 15-39.1-12 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-12. Early retirement.** ~~Any teacher~~ A tier one member who has acquired a vested right to a retirement annuity as set forth in section 15-39.1-11 and who has attained age fifty-five may retire prior to the normal retirement age as set forth herein in section 15-39.1-10 but the benefits to which the member is then entitled must be reduced to the actuarial equivalent of the benefit credits earned to the date of early retirement from the earlier of age sixty-five or the age at which current service plus age equals eighty-five. A tier two member who has acquired a vested right to a retirement annuity as set forth in section 15-39.1-11 and who has attained age fifty-five may retire prior to the normal retirement age as set forth in section 15-39.1-10 but the benefits to which the member is then entitled must be reduced to the actuarial equivalent of the benefit credits earned to the date of early retirement from the earlier of age sixty-five or the age at which current service plus age equals ninety.

**SECTION 9. AMENDMENT.** Section 15-39.1-15 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-15. Withdrawal from fund - Return to teaching.** ~~Any~~ A teacher who has withdrawn from the fund as set forth in this chapter may, by returning to teach in a public school or state institution of this state, regain service credit for prior teaching by making the required payment. The required payment, if made within five years of returning to teach in covered employment, is the amount that was withdrawn with interest. In all other cases, the purchase cost must be on an actuarial equivalent basis. If the teacher returns to teach in covered employment after June 30, 2008, the teacher becomes a tier two member regardless of whether the teacher repurchases service credit earned while the teacher was a tier one member.

**SECTION 10. AMENDMENT.** Subsection 1 of section 15-39.1-19.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in section 15-39.1-19.2, a retired teacher who is receiving a retirement annuity under chapter 15-39, 15-39.1, or 15-39.2 may not return to covered employment until thirty calendar days have elapsed from the member's retirement date. A retired member may then return to covered employment under an annual hour limit and continue receiving a monthly retirement benefit. The annual hour limit is based on the length of the reemployed retiree's contract as follows:
  - a. Retiree reemployment of nine months or less, annual limit is seven hundred hours;
  - b. Retiree reemployment of ten months, annual limit is eight hundred hours;

- c. Retiree reemployment of eleven months, annual limit is nine hundred hours; or
- d. Retiree reemployment of twelve months, annual limit is one thousand hours.

Employment as a substitute teacher does not apply to the annual hour limit. Professional development and extracurricular duties do not apply to the annual hour limit.

The retired member and the retired member's employer must notify the fund office in writing within thirty days of the retired member's return to covered employment. Should the retired member's employment exceed the annual hour limit, the retired member must immediately notify the fund office in writing. Failure to notify the fund office results in the loss of one month's annuity benefit. The retired member's monthly benefit must be discontinued the first of the month following the date the member reaches the annual hour limit.

A retired member who returns to teaching shall pay the ~~required member contributions~~ required by section 15-39.1-09 on those earnings received by the retired member after reaching the annual hour limit. ~~The employer shall pay the required contributions in a like manner.~~

A participating employer who employs a retired member under this section shall pay the employer contributions required by section 15-39.1-09 on the salary of the retired member both before and after the retired member reaches the annual hour limit.

**SECTION 11. AMENDMENT.** Section 15-39.1-19.2 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-19.2. Retired teachers return to active service - Critical shortage areas and disciplines - Rules.**

1. A retired teacher who is receiving a retirement annuity under chapter 15-39, 15-39.1, or 15-39.2 may elect to return to teaching without losing any benefits under the provisions of this section or elect to return to teaching under the provisions of section 15-39.1-19.1. To return to teaching under this section, a retired teacher must:
  - a. Return to teach in a critical shortage geographical area or subject discipline as determined by the education standards and practices board by rule; and
  - b. If retired after January 1, 2001, have been receiving a retirement annuity for at least one year. A retired teacher may perform noncontracted substitute teaching duties but may not engage in full-time or part-time teaching duties during the one-year separation from service.
  - c. Notify the fund office in writing within thirty days of the retired member's return to covered employment. The retired member's employer must also notify the fund office in writing within thirty days of the retired member's return to covered employment.

2. A retired teacher who returns to teaching under this section is not required to pay the employee assessment required by section 15-39.1-09. A retired teacher who returns to teaching under the provisions of this section must be treated as retired for all other purposes under this chapter. A retired teacher may not earn any additional service during the period of reemployment. The retired teacher's benefits may not be adjusted to reflect changes in the retired teacher's age or final average monthly salary at the end of the period of reemployment, any optional form of payment elected under section 15-39.1-16 remains effective during and after the period of reemployment, and additional benefits normally available to an active member, such as disability benefits, are not available to a retired teacher reemployed under this section.
3. A participating employer who employs a retired member under this section shall pay the employer contributions required by section 15-39.1-09 on the salary of the retired member.

**SECTION 12. AMENDMENT.** Section 15-39.1-20 of the North Dakota Century Code is amended and reenacted 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, the member may, after a period of one hundred twenty days, withdraw from the fund and is 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. The refund is in lieu of any other benefits to which the member may be entitled under the terms of this chapter, and by accepting the refund, the member is waiving any right to participate in the fund under the same provisions that existed at the time the refund was accepted regardless of whether the member later repurchases refunded service credit. The accumulated assessments of a member who ceases to be eligible to participate in the fund before becoming vested must be automatically refunded. The assessments plus interest earned, if not claimed by the member, must be returned in the fiscal year following the date of termination. The automatic refund must 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. A member may elect, at the time and under rules adopted by the board, to have any portion of an eligible rollover distribution paid directly in a direct rollover to an eligible retirement plan specified by the member as allowed under section 401(a)(31) of the Internal Revenue Code in effect on ~~August July 1, 2005~~ 2007.

**SECTION 13. AMENDMENT.** Subsection 2 of section 15-39.1-33 of the North Dakota Century Code is amended and reenacted as follows:

2. The member must meet one of the following conditions at the time the purchase is made:
  - a. The tier one member's age plus service credit must be equal to or greater than seventy-seven; ~~or~~
  - b. The tier one member's age must be at least fifty-five and the member must have at least three years of service credit; or

- c. The tier two member's age plus service credit must be equal to or greater than eighty-two; or
- d. The tier two member's age must be at least fifty-five and the member must have at least five years of service credit.

**SECTION 14. APPLICATION.** Sections 1, 6, 10, 11, 12, and 15 of this Act apply to salaries earned on and after July 1, 2007, and sections 2, 3, 4, 5, 7, 8, 9, and 13 apply to salaries earned on and after July 1, 2008.

**SECTION 15. APPROPRIATION.** There is appropriated out of any moneys in the teachers' fund for retirement, not otherwise appropriated, the sum of \$5,000, or so much of the sum as may be necessary, to the teachers' fund for retirement for the purpose of implementing this Act, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 16. EFFECTIVE DATE.** Sections 1, 6, 10, 11, 12, 14, and 15 of this Act become effective on July 1, 2007, and sections 2, 3, 4, 5, 7, 8, 9, and 13 of this Act become effective on July 1, 2008.

**SECTION 17. EXPIRATION DATE.** Section 3 of this Act is effective until the ratio of the actuarial value of assets to the actuarial accrued liability of the teachers' fund for retirement increases to ninety percent based upon the actuarial value of assets and expires on the July first that follows the first valuation that shows a ninety percent funded ratio. The board of trustees of the teachers' fund for retirement shall notify the legislative council of the expiration date of section 3 of this Act.

Approved April 30, 2007  
Filed May 1, 2007



## CHAPTER 158

### HOUSE BILL NO. 1487

(Representatives Carlson, Dahl, Glassheim, Thoreson)  
(Senator Hacker)

### STUDENT LOAN INTEREST RATES

AN ACT to amend and reenact section 15-62.1-03 of the North Dakota Century Code, relating to rates of interest for student loans; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 15-62.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**15-62.1-03. Rates of interest permissible for guaranteed loans.** All loans guaranteed by the agency and coinsured by the federal government must bear interest at rates which are no greater than those provided under the federally coinsured loan programs. In the event that the agency guarantees student loans without federal coinsurance pursuant to section 15-62.1-02, the interest rate on such loans may ~~not be more than two percentage points above the base participation rate as established by the Bank of North Dakota which is in effect on the date the loan is made~~ be fixed or variable. Any prohibition on the capitalization of interest does not apply to loans guaranteed under this chapter. A loan guaranteed under this chapter may provide for interest which remains unpaid at the end of any period specified in the loan to be added to the principal amount of the debt and thereafter accumulate interest.

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

Approved April 18, 2007  
Filed April 19, 2007

**CHAPTER 159****HOUSE BILL NO. 1235**

(Representatives R. Kelsch, Drovdal, Hanson)  
(Senators Flakoll, O'Connell, Wardner)

**SCHOLARS PROGRAM PARTICIPATION**

AN ACT to amend and reenact sections 15-62.2-00.1 and 15-62.2-01 of the North Dakota Century Code, relating to participation in the North Dakota scholars program by students in cross-border attendance programs.

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

**SECTION 1. AMENDMENT.** Section 15-62.2-00.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-62.2-00.1. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Applicant" means an individual ~~who~~:
  - a. (1) Who has graduated from a high school in this state;
  - (2) Who has graduated from a high school in a bordering state pursuant to chapter 15.1-29; or who
  - (3) Who is a resident of this state for tuition purposes; and ~~whose~~
- b. Whose assessment composite scores on the test of academic achievement administered by ACT, Inc., place the individual in at least the ninety-fifth percentile of all students taking the test by July first of the year preceding the year in which the individual is enrolled as a full-time resident student in an eligible institution.
2. "Eligible institution" means an accredited public or nonprofit private postsecondary institution in this state.
3. "Full-time resident student" means an individual who ~~has~~:
  - a. (1) Has graduated from a high school in this state;
  - (2) Has graduated from a high school in a bordering state pursuant to chapter 15.1-29; or who is
  - (3) Is a resident of this state for tuition purposes; and ~~who is~~
- b. Is enrolled at an eligible institution carrying a course of study which is "full time" as defined by the eligible institution.
4. "Scholar" means a full-time resident student who is awarded a scholarship or who has previously received a scholarship.

5. "Scholarship" means a financial award granted to a state scholar as determined by this chapter.

**SECTION 2. AMENDMENT.** Section 15-62.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**15-62.2-01. Student financial assistance and scholars programs - Establishment - Administrative responsibility.**

1. The North Dakota student financial assistance and scholars programs are established to provide grants or scholarships, or both, to assist the following students:
  - ~~1.~~ a. Resident undergraduate students pursuant to section 15-10-19.1.
  - ~~2.~~ b. North Dakota resident students who have attended and graduated from a high school in a bordering state pursuant to ~~section 15-40.2-10, chapter 15.1-29~~ and who are attending qualified institutions of postsecondary education within North Dakota.
  - ~~3.~~ c. North Dakota resident students who, because of a physical or mental ~~handicap as~~ disability certified by a physician, are attending postsecondary institutions out of state due to the lack of special services or facilities, ~~or both,~~ necessary to meet the postsecondary educational needs of ~~the handicapped~~ disabled students within North Dakota.
  4. d. Scholars who qualify and are selected for scholarships pursuant to sections 15-62.2-00.1 and 15-62.2-03.1 through 15-62.2-03.5.
2. A student must be in substantial need of financial assistance to receive grants under the student financial assistance program.
3. The state board of higher education shall administer the student financial assistance program and the scholars program.
4. At least twenty-three and one-half percent of the funds appropriated for the student financial assistance program must be allocated to students at private baccalaureate degree-granting institutions with the remaining funds allocated to students at public and American Indian institutions.

Approved March 9, 2007  
Filed March 12, 2007

## CHAPTER 160

### HOUSE BILL NO. 1395

(Representatives Kasper, Boe, Charging, D. Johnson)  
(Senators Flakoll, Wardner)

### TRIBAL COLLEGE ASSISTANCE

AN ACT to provide financial assistance to tribally controlled community colleges; to create and enact a new section to chapter 57-51.1 of the North Dakota Century Code, relating to the allocation of collections from reservation oil development; and to provide an appropriation.

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

**SECTION 1. Definitions.** In this Act, unless the context otherwise requires:

1. "Nonbeneficiary student" means a resident of North Dakota who is enrolled in a tribally controlled community college but is not an enrolled member of a federally recognized Indian tribe.
2. "Tribally controlled community college" means an institution of higher education in this state which is formally controlled or has been formally sanctioned or chartered by the governing body of an Indian tribe, or any combination of federally recognized Indian tribes.

**SECTION 2. Institutions eligible for grant assistance.** Any tribally controlled community college located in this state is eligible to receive supplemental grant assistance for nonbeneficiary students.

**SECTION 3. Grant authorization.** The state board of higher education shall make grants to tribally controlled community colleges to defray the costs of education associated with enrollment of nonbeneficiary students. Grants made pursuant to this section must go directly to the recipient institutions.

**SECTION 4. Submission of grant application - Distribution of grants.** In order to qualify for a grant under this Act, an institution shall submit an application in the manner required by the state board of higher education. If an application is approved, the board shall distribute to each tribally controlled community college, during each year of the biennium, four thousand five hundred eighty-one dollars for each nonbeneficiary student on a full-time equivalent basis. If the amount appropriated is insufficient, the board shall distribute a prorated amount per nonbeneficiary student on a full-time equivalent basis.

**SECTION 5. Reporting by recipient institutions.** Each institution receiving a grant under this Act shall annually provide to the state board of higher education an accurate and detailed account of the expenditures of the grant funds received by the institution under sections 1 through 5 of this Act and a copy of the institution's latest audit report and documentation of the enrollment status and ethnic status of each student on whose account financial assistance under this Act is sought.

**SECTION 6. APPROPRIATION.** There is appropriated out of any moneys in the permanent oil tax trust fund in the state treasury, not otherwise appropriated, the sum of \$700,000, or so much of the sum as may be necessary, to the state board of

higher education for the purpose of providing grant assistance payments to tribally controlled community colleges, for the biennium beginning July 1, 2007, and ending June 30, 2009. No more than \$350,000 may be expended for this purpose during the first year of the biennium.

**SECTION 7.** A new section to chapter 57-51.1 of the North Dakota Century Code is created and enacted as follows:

**Separate allocation of state share of collections from reservation development.** Notwithstanding any other provision of law, the state treasurer shall transfer to the permanent oil tax trust fund the first seven hundred thousand dollars of the state's share of tax revenues under this chapter from oil produced from wells within the exterior boundaries of the Fort Berthold Reservation drilled and completed after June 30, 2007.

Approved May 10, 2007  
Filed May 11, 2007

# ELEMENTARY AND SECONDARY EDUCATION

## CHAPTER 161

### HOUSE BILL NO. 1169

(Representatives DeKrey, Drovdal, Grande, Thoreson)  
(Senator G. Lee)

## SUPERINTENDENT OF PUBLIC INSTRUCTION QUALIFICATIONS

AN ACT to amend and reenact section 15.1-02-01 of the North Dakota Century Code, relating to qualifications of the superintendent of public instruction.

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

**SECTION 1. AMENDMENT.** Section 15.1-02-01 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-02-01. Superintendent of public instruction - Qualifications.** The qualified electors of this state shall elect a superintendent of public instruction at the appropriate general election. The superintendent must be at least twenty-five years of age on the day of the election; and have the qualifications of an elector for that office; ~~and hold a valid North Dakota professional teaching license on the day of the election and~~ at all times during the superintendent's term of office.

Approved April 4, 2007  
Filed April 5, 2007

**CHAPTER 162****SENATE BILL NO. 2030**

(Legislative Council)  
(Education Committee)

**REGIONAL EDUCATION ASSOCIATIONS**

AN ACT to create and enact a new section to chapter 15.1-09, chapter 15.1-09.1, and a new section to chapter 15.1-13 of the North Dakota Century Code, relating to authorization for prekindergarten programs, regional education associations, and student teaching requirements; to amend and reenact sections 12.1-06-05, 15.1-02-08, 15.1-07-23, 15.1-09-33, 15.1-32-08, and 15.1-33-02 of the North Dakota Century Code and section 28 of chapter 167 of the 2005 Session Laws, relating to the renouncement of criminal intent, accounting procedures, school district business managers, and contingent distributions of per student payments; to repeal sections 15.1-07-28, 15.1-07-30, 15.1-27-40, and 54-35-21 of the North Dakota Century Code, relating to criteria for and expenditures by educational associations governed by joint powers agreements and the no child left behind statutory committee; to provide for legislative council studies; to provide for a report to the legislative council; to provide an effective date; and to declare an emergency.

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

<sup>92</sup> **SECTION 1. AMENDMENT.** Section 12.1-06-05 of the North Dakota Century Code, as amended by section 1 of Senate Bill No. 2262, as approved by the sixtieth legislative assembly, is amended and reenacted as follows:

**12.1-06-05. General provisions.**

1. The definition of an offense in sections 12.1-06-01 to 12.1-06-04 does not apply to another offense also defined in sections 12.1-06-01 to 12.1-06-04.
2. Whenever "attempt" or "conspiracy" is made an offense outside this chapter, it means attempt or conspiracy, as the case may be, as defined in this chapter.
3. a. Other than as provided in subsection 4, in a prosecution under section 12.1-06-01, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of criminal intent, the defendant avoided the commission of the crime attempted by abandoning any criminal effort and, if mere abandonment was insufficient to accomplish such avoidance, by taking further and affirmative steps which prevented the commission thereof.

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<sup>92</sup> Section 12.1-06-05 was also amended by section 1 of Senate Bill No. 2262, chapter 121.

- b. Other than as provided in subsection 4, in a prosecution under section 12.1-06-03 or 12.1-06-04, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of criminal intent, the defendant prevented the commission of the crime solicited or of the crime or crimes contemplated by the conspiracy.
  - c. A renunciation is not "voluntary and complete" within the meaning of this section if it is motivated in whole or in part by (1) a belief that a circumstance exists which increases the probability of detection or apprehension of the defendant or another participant in the criminal operation, or which makes more difficult the consummation of the crime, or (2) a decision to postpone the criminal conduct until another time or to substitute another victim, or another but similar objective.
4. An individual ~~under the age of twenty-one~~ is immune from prosecution under this chapter if:
- a. The individual voluntarily and completely renounced the individual's criminal intent;
  - b. The individual is a student enrolled in an elementary school, middle school, or a high school in this state or is enrolled at an institution of higher education in this state;
  - c. The offense would have resulted in:
    - (1) Harm to another student enrolled in an elementary school, middle school, or a high school in this state;
    - (2) Harm to another student enrolled in an institution of higher education in this state;
    - (3) Harm to an employee of a school district or a nonpublic school in this state; ~~or~~
    - ~~(3)~~ (4) Harm to an employee of an institution of higher education in this state; or
    - (5) Damage to a school building or school property of a school district in this state or property of an institution of higher education in this state; and
  - d. The renunciation was given to a law enforcement officer ~~or~~, to an administrator of a school or school district in this state, or to an official of an institution of higher education in this state before any harm to others or damage to property occurs.

**SECTION 2. AMENDMENT.** Section 15.1-02-08 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-02-08. Accounting and reporting system - Uniformity.** The superintendent of public instruction shall implement a uniform system for the accounting, budgeting, and reporting of data for all school districts in the state and for all regional education associations governed by chapter 15.1-09.1. The



superintendent of public instruction shall designate the software standards to be used by the school districts and by the regional education associations in their accounting, budgeting, and reporting functions.

**SECTION 3. AMENDMENT.** Section 15.1-07-23 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-07-23. School district business manager - Bond.** A Any person serving as a school district business manager shall furnish to the school board a bond in an amount to be fixed by the school board and equal to at least twenty-five percent of the maximum amount of money subject to the business manager's control at any one time. The bond must be conditioned for the faithful discharge of the business manager's duties, including the maintenance of accurate financial records and the safekeeping and deliverance of all school district property and funds that come into the business manager's control.

<sup>93</sup> **SECTION 4. AMENDMENT.** Section 15.1-09-33 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-09-33. School board - Powers.** The board of a school district may:

1. Establish a system of free public schools for all children of legal school age residing within the district.
2. Organize, establish, operate, and maintain elementary, middle, and high schools.
3. Have custody and control of all school district property and, in the case of the board of education of the city of Fargo, have custody and control of all public school property within the boundaries of the Fargo public school district and to manage and control all school matters.
4. Acquire real property and construct school buildings and other facilities.
5. Relocate or discontinue schools and liquidate the assets of the district as required by law; provided no site may be acquired or building constructed, or no school may be organized, established, operated, maintained, discontinued, or changed in location without the approval of the state board of public school education if outside the boundary of the district.
6. Purchase, sell, exchange, and improve real property.
7. Lease real property for a maximum of one year except in the case of a career and technical education facility constructed in whole or in part with financing acquired under chapter 40-57, which may be leased for up to twenty years.
8. Exercise the power of eminent domain to acquire real property for school purposes.

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<sup>93</sup> Section 15.1-09-33 was also amended by section 10 of Senate Bill No. 2214, chapter 293.

9. Purchase, sell, exchange, improve, and lease for up to one year, equipment, furniture, supplies, and textbooks.
10. Recruit or contract with others to recruit homes and facilities which provide boarding care for special education students.
11. Provide dormitories for the boarding care of special education students.
12. Insure school district property.
13. Independently or jointly with other school districts, purchase telecommunications equipment or lease a telecommunications system or network.
14. Provide for the education of students by another school district.
15. Contract with federal officials for the education of students in a federal school.
16. Prescribe courses of study in addition to those prescribed by the superintendent of public instruction or by law.
17. Adopt rules regarding the instruction of students, including their admission, transfer, organization, grading, and government.
18. Join the North Dakota high school activities association and pay membership fees.
19. Adopt alternative curricula for high school seniors who require fewer than four academic units.
20. Contract with, employ, and compensate school district personnel.
21. Contract with and provide reimbursement for the provision of teaching services by an individual certified as an instructor in the areas of North Dakota American Indian languages and culture by the education standards and practices board.
22. Suspend school district personnel.
23. Dismiss school district personnel.
24. Participate in group insurance plans and pay all or part of the insurance premiums.
25. Contract for the services of a district superintendent, provided that the contract, which may be renewed, does not exceed a period of three years.
26. Contract for the services of a principal.
27. Employ a an individual to serve as the school district business manager or contract with any person to perform the duties assigned to a school district business manager by law.

28. Suspend or dismiss a school district business manager for cause without prior notice.
29. Suspend or dismiss a school district business manager without cause with thirty days' written notice.
30. Defray the necessary and contingent expenses of the board.
31. Levy a tax upon property in the district for school purposes.
32. Amend and certify budgets and tax levies, as provided in title 57.
33. Pay dues allowing for the board to hold membership in city, county, state, and national organizations and associations.
34. Designate, at its annual meeting, a newspaper of general circulation as the official newspaper of the district.

**SECTION 5.** A new section to chapter 15.1-09 of the North Dakota Century Code is created and enacted as follows:

**Prekindergarten program - Authorization - Support.** The board of a school district may establish a prekindergarten program and may receive and expend any state moneys specifically appropriated for the program, any federal funds specifically appropriated or approved for the program, and any gifts, grants, and donations specifically given for the program.

**SECTION 6.** Chapter 15.1-09.1 of the North Dakota Century Code is created and enacted as follows:

**15.1-09.1-01. Definition.** For purposes of this chapter, "regional education association" means a group of school districts that have entered a joint powers agreement that has been reviewed by the superintendent of public instruction and verified as meeting the requirements of section 15.1-09.1-02.

**15.1-09.1-02. Regional education association - Joint powers agreement - Review by superintendent of public instruction - Criteria.** Before a group of school districts may be designated as a regional education association, the superintendent of public instruction shall review the joint powers agreement that the districts have entered and verify that:

1. The school districts:
  - a. Have a combined total land mass of at least five thousand eight hundred square miles [1502193 hectares];
  - b. (1) Have a combined total land mass of at least four thousand five hundred square miles [1165494 hectares]; and
    - (2) Number at least twelve;
  - c. (1) Have a combined total land mass of at least four thousand square miles [1035995 hectares]; and
    - (2) Have at least three thousand students in average daily membership; or

- d. (1) Have a combined total land mass of at least one thousand five hundred square miles [388498 hectares]; and
      - (2) Have at least seven thousand five hundred students in average daily membership.
2. The school districts are contiguous to each other or, if the districts are not contiguous to each other, the superintendent of public instruction shall verify that the participating districts can provide sound educational opportunities to their students in a fiscally responsible manner without injuring other school districts or regional education associations and without negatively impacting the ability of other school districts or regional education associations to provide sound educational opportunities to their students in a fiscally responsible manner. A decision by the superintendent of public instruction under this subsection may be appealed to the state board of public school education. A decision by the state board is final.
3. The joint powers agreement requires that the participating school districts maintain a joint operating fund and share various administrative functions and student services in accordance with subsection 4.
4.
  - a. During the first two school years in which a regional education association is operational, each participating school district shall share in at least two administrative functions and two student services, selected by the district.
  - b. During the third and fourth school years in which a regional education association is operational, each participating school district shall share in at least three administrative functions and three student services, selected by the district.
  - c. During the fifth school year in which a regional education association is operational, and each year thereafter, each participating school district shall share at least five administrative functions and five student services, selected by the district.
  - d. For purposes of this subsection:
    - (1) "Administrative functions" means:
      - (a) Business management;
      - (b) Career and technical education services management;
      - (c) Curriculum mapping or development;
      - (d) Data analysis;
      - (e) Federal program support;
      - (f) Federal title program management;
      - (g) Grant writing;

- (h) School improvement;
- (i) School safety and environment management;
- (j) Special education services management;
- (k) Staff development;
- (l) Staff retention and recruitment;
- (m) Staff sharing;
- (n) Technology support; and
- (o) Any other functions approved by the superintendent of public instruction.

(2) Student services means:

- (a) Advanced placement classes;
- (b) Alternative high schools or alternative high school programs;
- (c) Career and technical education classes;
- (d) Counseling services;
- (e) Common elementary curricula;
- (f) Distance learning classes;
- (g) Dual credit classes;
- (h) Foreign language classes;
- (i) Library and media services;
- (j) Summer programs;
- (k) Supplemental instruction programs; and
- (l) Any other services approved by the superintendent of public instruction.

- e. For purposes of this subsection, if a regional education association became operational before July 1, 2005, the 2005-06 school year must be considered the provider's first year of operation.

5. The joint powers agreement provides:

- a. Criteria for the future participation of school districts that were not parties to the original joint powers agreement;

- b. An application process by which school districts that were not parties to the original joint powers agreement can become participating districts; and
  - c. A process by which school districts that were not parties to the original joint powers agreement and whose application to participate in the agreement was denied can appeal the decision to the superintendent of public instruction.
6. The joint powers agreement provides for the employment and compensation of staff.
7. The joint powers agreement:
- a. Establishes the number of members on the governing board;
  - b. Establishes the manner in which members of the governing board are determined;
  - c. Requires all members of the governing board or their designees to be individuals currently serving on the board of a participating school district; and
  - d. Allows for the inclusion of ex officio nonvoting members on the governing board.
8. The joint powers agreement provides that the board of the regional education association shall meet at least quarterly.
9. The joint powers agreement does not permit the regional education association to compensate members of the regional education association board for attending meetings of the board and does not permit the regional education association to reimburse members of the board for any expenses incurred in attending meetings of board.

**15.1-09.1-03. Regional education association - Provision of special education and related services - Annual plan.** A regional education association may prepare an annual plan regarding the provision of special education and related services on behalf of its members and submit the plan to the superintendent of public instruction for approval.

**15.1-09.1-04. Regional education association - Provision of special education and related services - Powers.** A regional education association that provides special education and related services may:

- 1. Receive and expend state and federal moneys for the provision of special education and related services to the students of its member districts;
- 2. Employ personnel necessary to carry out administrative services, itinerant instruction, coordinative services, and related services; and
- 3. Receive and expend private and public moneys.

**15.1-09.1-05. Regional education association - Provision of special education and related services - Student transportation - Coordination.** A

regional education association shall plan and coordinate the transportation of students who are enrolled in its member districts and to whom it provides special education and related services.

**15.1-09.1-06. Regional education associations - Receipt and use of moneys.** The board of a regional education association may receive and expend moneys for the provision of administrative functions, student services, and any other lawful activities.

**15.1-09.1-07. Joint operating fund - Accounting functions.** The board of a regional education association may contract with any person, including a school district, for the maintenance of the association's joint operating fund and for the performance of any business or accounting functions required by law or necessary for the association's operation.

**15.1-09.1-08. Regional education association - Report of expenses.**

1. The board of a regional education association shall submit annually to the superintendent of public instruction, at the time and in the manner designated by the superintendent, a report detailing all expenses incurred by the association and shall attribute the expenses on a per student basis by participating school district.
2. The board shall deposit any moneys received by or on behalf of the regional education association into the association's joint operating fund.

**15.1-09.1-09. Compensation - Reimbursement - Extraordinary service.** The board of a regional education association may provide compensation and reimbursement to any board member who, at the direction of the board, performs extraordinary service on behalf of the board. For purposes of this section, "extraordinary service" means duties beyond those reasonably expected of members of the board and includes travel to and attendance at national meetings or conventions.

**15.1-09.1-10. State aid - Payable to a regional education association - Obligation of district.**

1. The superintendent of public instruction shall forward the portion of a school district's state aid that is payable by the superintendent as a result of the district's participation a regional education association directly to the association in which the district participates. The superintendent shall forward the amount payable under this subsection at the same time and in the same manner as provided for other state aid payments under section 15.1-27-01.
2. If the superintendent of public instruction determines that a school district failed to meet any contractual or statutory obligation imposed upon it as a result of the district's participation in a regional education association, the superintendent shall subtract the amount for which the district was not eligible from any future distribution of state aid to the district under section 15.1-27-01.

**SECTION 7.** A new section to chapter 15.1-13 of the North Dakota Century Code is created and enacted as follows:

**Student teaching requirements - Teachers licensed in other states.** If an individual who is or was licensed to teach in another state applies for a license to teach in this state, the education standards and practices board may not impose on the individual any student teaching requirements as a condition of licensure. This section is applicable to an individual who graduated from a state-approved regular education program but not to an individual who completed an alternative education program as a condition of licensure.

<sup>94</sup> **SECTION 8. AMENDMENT.** Section 15.1-32-08 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-32-08. School districts - Provision of special education.** Each school district shall provide special education, ~~singly or jointly with other districts,~~ and related services as a single district, as a member of a multidistrict special education unit in accordance with ~~this~~ chapter 15.1-33, or as a member of a regional education association approved by the superintendent of public instruction under chapter 15.1-09.1. Each school district and entity providing special education shall cooperate with the director of special education and with the institutions of this state in the provision of special education.

<sup>95</sup> **SECTION 9. AMENDMENT.** Section 15.1-33-02 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-33-02. Multidistrict special education units - School district participation.** A school district may join a multidistrict special education unit or together with other school districts form a multidistrict special education unit for purposes of planning and delivering special education and related services. ~~Each school district shall participate in a multidistrict special education unit or have on file with the superintendent of public instruction a plan for providing special education and related services as a single district.~~ If a school district wishes to join a multidistrict special education unit from which it has been excluded, the school district may petition the superintendent of public instruction. A school district may appeal a decision of the superintendent under this section to the state board of public school education.

**SECTION 10. AMENDMENT.** Section 28 of chapter 167 of the 2005 Session Laws is amended and reenacted as follows:

**SECTION 28. CONTINGENCY.** If any moneys appropriated for per student payments and transportation payments in the grants - state school aid line item in House Bill No. 1013, as approved by the fifty-ninth legislative assembly, remain after payment of all statutory obligations for per student and transportation payments during the biennium beginning July 1, 2005, and ending June 30, 2007, and after the superintendent of public instruction has fulfilled any directives contained in section 27 of this Act, the superintendent shall distribute the remaining moneys as follows:

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<sup>94</sup> Section 15.1-32-08 was also amended by section 37 of Senate Bill No. 2200, chapter 163.

<sup>95</sup> Section 15.1-33-02 was also amended by section 42 of Senate Bill No. 2200, chapter 163.



1. The superintendent of public instruction shall use the first \$450,000, or so much of that amount as may be necessary, to provide additional payments to school districts serving English language learners in accordance with section 15.1-27-12.
2. The superintendent of public instruction shall use the next \$1,000,000, or so much of that amount as may be necessary, for the purpose of providing additional ~~per student~~ payments to school districts participating in eligible educational associations in accordance with section 32 of this Act.
  - a. The superintendent of public instruction shall distribute during the 2007-09 biennium \$45,000, or so much of that amount as may be necessary, as grants in the amount of five thousand dollars each to any educational association that commits to the development and implementation of a teacher mentoring program for first-year, second-year, and third-year teachers employed by school districts participating in the association. If any of this amount remains after meeting the requirements of this subdivision, the superintendent shall distribute those funds as additional per student payments on a prorated basis to school districts participating in educational associations.
  - b. The superintendent of public instruction shall distribute \$955,000, or so much of the sum as may be necessary, as additional per student payments to school districts participating in eligible educational associations as provided in section 32 of chapter 167 of the 2005 Session Laws.
3. The superintendent of public instruction shall use the remainder of the moneys to provide additional per student payments on a prorated basis according to the latest available average daily membership of each school district.

**SECTION 11. LEGISLATIVE COUNCIL STUDY - HIGH SCHOOL CURRICULA.** The legislative council shall consider studying, during the 2007-08 interim, the appropriateness and adequacy of high school curricula, with respect to preparing students for higher education and for the workplace. The study should examine curricular changes implemented in other states and expectations placed on students in other countries. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 12. LEGISLATIVE COUNCIL STUDY - SERVICES TO ENGLISH LANGUAGE LEARNERS.** The legislative council shall consider studying, during the 2007-08 interim, the delivery of services to English language learners, including federal requirements, instructional options, assistance from the private sector, and the short-term and long-term budgetary impacts on the school districts and taxpayers of the state. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 13. LEGISLATIVE COUNCIL STUDY - REAUTHORIZATION OF THE NO CHILD LEFT BEHIND ACT.** The legislative council shall consider studying, during the 2007-08 interim, the reauthorization of the No Child Left Behind Act, including the effect of proposed changes on the students, teachers, and school

districts of this state, the manner in which state assessments are conducted, the reporting and utilization of assessment results, and the performance of North Dakota students. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 14. LEGISLATIVE COUNCIL STUDY - AFTERSCHOOL PROGRAMS.** The legislative council shall consider studying, during the 2007-08 interim, federally funded afterschool programs being offered to North Dakota students, including the content of the programs, applicable regulations, targeted students, and the direct and indirect costs and benefits of the programs. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 15. LEGISLATIVE COUNCIL STUDY - TEACHER MENTORING.** The legislative council shall consider studying, during the 2007-08 interim, the feasibility and desirability of supporting teacher mentoring programs in urban and rural school districts and the most effective and efficient ways teacher mentoring programs could be implemented and delivered, including consideration of the identification and preparation of mentors and the styles, strategies, and professional development needs that would assist novice teachers in surviving, thriving, and ultimately deciding to consider teaching as a lifelong career. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations to the sixty-first legislative assembly.

**SECTION 16. LEGISLATIVE COUNCIL STUDY - REGIONAL EDUCATION ASSOCIATIONS.** The legislative council shall consider studying, during the 2007-08 interim, the short-term and long-term involvement of regional education associations and shall include the feasibility and desirability of regional education associations becoming political subdivisions; whether teachers should be employed directly by regional education associations, and whether that employment should include bargaining rights, contract renewal and nonrenewal provisions, participation in the teachers' fund for retirement, and participation in the state's uniform group insurance program; the impact that allowing regional education associations to hire teachers directly would have on the recruitment and retention of teachers currently employed by school districts and on teacher salary levels; whether teacher employment contracts, if offered by regional education associations, would have to parallel those of participating school districts with respect to common school calendars, annual or personal leave provisions, and other contractual benefits; the conduct of evaluations, if teachers are employed directly by regional education associations, including who will conduct the evaluations, their frequency, and the criteria upon which the evaluations are based; the organizational structure of regional education associations, including the qualifications of administrative or supervisory personnel; the governance structure of regional education associations; and state level oversight. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 17. REPORT TO LEGISLATIVE COUNCIL - REGIONAL EDUCATION ASSOCIATIONS.** At the conclusion of each school year during the 2007-09 biennium, the superintendent of public instruction shall compile a report covering the operations of each regional education association governed by chapter 15.1-09.1. The report must include the administrative functions and student services in which members of each regional education association participated and the direct and indirect benefits of that participation. The report must specifically address the

impact of regional education associations on course offerings, student achievement, professional development opportunities, and the sharing of administrative and instructional personnel. The report also must note other resulting benefits or efficiencies. The superintendent of public instruction shall present the reports to an interim committee designated by the legislative council.

<sup>96</sup> **SECTION 18. REPEAL.** Sections 15.1-07-28, 15.1-07-30, 15.1-27-40, and 54-35-21 of the North Dakota Century Code are repealed.

**SECTION 19. EFFECTIVE DATE.** Sections 2 through 9 and sections 11 through 18 of this Act become effective on July 1, 2007.

**SECTION 20. EMERGENCY.** This Act is declared to be an emergency measure.

Approved May 4, 2007  
Filed May 4, 2007

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<sup>96</sup> Section 15.1-07-28 was also repealed by section 58 of Senate Bill No. 2200, chapter 163.

**CHAPTER 163****SENATE BILL NO. 2200**

(Senators Flakoll, Holmberg, O'Connell)  
(Representatives Gulleason, R. Kelsch, Monson)

**STATE AID TO SCHOOL DISTRICTS**

AN ACT to create and enact ten new sections to chapter 15.1-27, a new section to chapter 15.1-36, and two new sections to chapter 15.1-38 of the North Dakota Century Code, relating to the determination of state aid to school districts; to amend and reenact section 15.1-02-09, subsection 4 of section 15.1-06-04, and sections 15.1-23-19, 15.1-27-01, 15.1-27-02, 15.1-27-04, 15.1-27-08, 15.1-27-09, 15.1-27-10, 15.1-27-11, 15.1-27-15, 15.1-27-16, 15.1-27-17, 15.1-27-18, 15.1-27-19, 15.1-27-20, 15.1-27-35, 15.1-28-03, 15.1-29-01, 15.1-29-02, 15.1-29-12, 15.1-29-14, 15.1-29-15, 15.1-31-03, 15.1-31-04, 15.1-31-07, 15.1-32-08, 15.1-32-14, 15.1-32-15, 15.1-32-16, 15.1-32-18, 15.1-33-02, 15.1-36-02, and 57-15-14 of the North Dakota Century Code, relating to the determination of state aid to school districts; to repeal sections 15.1-07-28, 15.1-09-46, 15.1-27-05, 15.1-27-06, 15.1-27-07, 15.1-27-12, 15.1-27-14, 15.1-27-21, 15.1-27-32, 15.1-27-36, 15.1-27-37, and 15.1-27-38 of the North Dakota Century Code, relating to educational associations, the school district census, the school district equalization factor, weighting factors, supplemental payments, additional per student payments, property valuations, and teacher compensation payments; to provide an appropriation; to provide for a commission on education improvement; to provide for teacher compensation increases; to provide for future determinations of average daily membership; to provide for the distribution of transportation grants, reorganization planning grants, and contingent payments; to provide for a contingent transfer; to provide for a report to the legislative council; to provide an expiration date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 15.1-02-09 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-02-09. School district finance facts report - Contents.** The superintendent of public instruction shall submit an annual report on the financial condition of school districts to the governor, legislative council, and the secretary of state by the end of February. The secretary of state shall transmit the report to state archivist for official and public use. The report must include:

1. The number of school districts in the state.
2. The financial condition of each school district, including its receipts and expenditures.
3. The value of all property owned or controlled by each school district.
4. The cost of education in each school district.

5. The number of teachers employed by each school district and their salaries.
6. The number of students in average daily membership, in weighted average daily membership, and in average daily attendance, in each school district, the grades in which ~~they~~ the students are enrolled, and, when applicable, the courses in which ~~they~~ the students are enrolled.
7. Information regarding the state's approved nonpublic schools.
8. Other statistical data on public education in the state.

<sup>97</sup> **SECTION 2. AMENDMENT.** Subsection 4 of section 15.1-06-04 of the North Dakota Century Code is amended and reenacted as follows:

4. a. During the 2007-08 school year, a full day of instruction consists of:
  - ~~a.~~ (1) At least five and one-half hours for elementary students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction; and
  - ~~b.~~ (2) At least six hours for high school students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction.
- b. Beginning with the 2008-09 school year, a full day of instruction consists of:
  - (1) At least five and one-half hours for kindergarten and elementary students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction; and
  - (2) At least six hours for high school students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction.

**SECTION 3. AMENDMENT.** Section 15.1-23-19 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-23-19. Home education - State aid to school districts.** For purposes of allocating state aid to school districts, a child receiving home education is ~~deemed~~ enrolled in the child's school district of residence if the child is monitored by an individual who is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board and employed by the public school district in which the child resides. A school district is entitled to fifty percent of the per student payment provided in section 15.1-27-04 times the appropriate factor in section 15.1-27-06 or 15.1-27-07 for each child receiving home

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<sup>97</sup> Section 15.1-06-04 was also amended by section 1 of House Bill No. 1270, chapter 164.

education. If a child receiving home education is enrolled in public school classes, proportionate payments must be made. The total amount may not exceed the equivalent of one full per student payment times the appropriate weighting factor included in a school district's determination of average daily membership only for those days or portions of days that the child attends a public school.

**SECTION 4. AMENDMENT.** Section 15.1-27-01 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-01. Payments to school districts - Distribution.**

1. The superintendent of public instruction shall ~~determine~~ estimate the total state payments ~~made to each to which a school district during the previous fiscal~~ is entitled each year.
2. The superintendent of public instruction shall pay each district ten percent of the amount determined under subsection 1, within the limits of legislative appropriation, on or before August first and September first of each year. The superintendent shall pay each school district twenty percent of that amount, within the limits of legislative appropriation, on or before October first of each year.
3. The superintendent of public instruction shall ~~determine~~ estimate the amount that, in addition to the payments already made, is necessary to constitute the remainder of the amount due each district for the current school year.
4. On or before November first, the superintendent of public instruction shall pay to each district, within the limits of legislative appropriation, an amount that, in addition to the above payments, constitutes sixty percent of the sum due under this chapter.
5. On or before the first day of December, January, February, March, and April, payments equal to twenty percent of the total remaining payments must be made to each district.
6. If funds appropriated for distribution to districts as state aid become available after April first, the superintendent of public instruction shall distribute the newly available payments on or before June thirtieth.

**SECTION 5. AMENDMENT.** Section 15.1-27-02 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-02. Per student payments - Required reports.**

1. The superintendent of public instruction may not forward state aid payments to a school district beyond the October payment unless the district has filed the following with the superintendent:
  - a. ~~An annual average daily~~ The June thirtieth student membership and attendance report;
  - b. An annual school district financial report;
  - c. The September tenth fall enrollment report; and

- d. The personnel report forms for licensed and nonlicensed employees.
2. On or before December fifteenth, each school district shall file with the superintendent of public instruction the taxable valuation and mill levy certifications. If a district fails to file the taxable valuation and mill levy certifications by the required date, the superintendent of public instruction may not forward to the district any state aid payments to which the district is entitled, until the taxable valuation and mill levy certifications are filed.

**SECTION 6.** A new section to chapter 15.1-27 of the North Dakota Century Code is created and enacted as follows:

**Weighted average daily membership - Determination.**

1. For each school district, the superintendent of public instruction shall multiply by:
  - a. 1.00 the number of full-time equivalent students enrolled in a migrant summer program;
  - b. 1.00 the number of full-time equivalent students enrolled in an extended educational program in accordance with section 15.1-32-17;
  - c. 0.60 the number of full-time equivalent students enrolled in a summer education program;
  - d. 0.50 the number of full-time equivalent students enrolled in a home-based education program and monitored by the school district under chapter 15.1-23;
  - e. 0.25 the number of full-time equivalent students enrolled in an alternative high school;
  - f. 0.25 the number of full-time equivalent students enrolled in an isolated elementary school;
  - g. 0.25 the number of full-time equivalent students enrolled in an isolated high school;
  - h. 0.20 the number of full-time equivalent students attending school in a bordering state in accordance with section 15.1-29-01;
  - i. 0.17 the number of full-time equivalent students enrolled in an early childhood special education program;
  - j. 0.14 the number of full-time equivalent students enrolled in a new immigrant English language learner program;
  - k. 0.067 the number of students enrolled in average daily membership, in order to support the provision of special education services; and

- l. 0.02 the number of full-time equivalent students, other than those provided for in subdivision j, who are enrolled in an English language learner program.
2. The superintendent of public instruction shall determine each school district's weighted average daily membership by adding the products derived under subsection 1 to the district's average daily membership.

**SECTION 7.** A new section to chapter 15.1-27 of the North Dakota Century Code is created and enacted as follows:

**School district size weighting factor - Weighted student units.**

1. For each high school district in the state, the superintendent of public instruction shall assign a school district size weighting factor of:
  - a. 1.25 if the students in average daily membership number fewer than 185;
  - b. 1.24 if the students in average daily membership number at least 185 but fewer than 200;
  - c. 1.23 if the students in average daily membership number at least 200 but fewer than 215;
  - d. 1.22 if the students in average daily membership number at least 215 but fewer than 230;
  - e. 1.21 if the students in average daily membership number at least 230 but fewer than 245;
  - f. 1.20 if the students in average daily membership number at least 245 but fewer than 260;
  - g. 1.19 if the students in average daily membership number at least 260 but fewer than 270;
  - h. 1.18 if the students in average daily membership number at least 270 but fewer than 275;
  - i. 1.17 if the students in average daily membership number at least 275 but fewer than 280;
  - j. 1.16 if the students in average daily membership number at least 280 but fewer than 285;
  - k. 1.15 if the students in average daily membership number at least 285 but fewer than 290;
  - l. 1.14 if the students in average daily membership number at least 290 but fewer than 295;
  - m. 1.13 if the students in average daily membership number at least 295 but fewer than 300;



- n. 1.12 if the students in average daily membership number at least 300 but fewer than 305;
  - o. 1.11 if the students in average daily membership number at least 305 but fewer than 310;
  - p. 1.10 if the students in average daily membership number at least 310 but fewer than 320;
  - q. 1.09 if the students in average daily membership number at least 320 but fewer than 335;
  - r. 1.08 if the students in average daily membership number at least 335 but fewer than 350;
  - s. 1.07 if the students in average daily membership number at least 350 but fewer than 360;
  - t. 1.06 if the students in average daily membership number at least 360 but fewer than 370;
  - u. 1.05 if the students in average daily membership number at least 370 but fewer than 380;
  - v. 1.04 if the students in average daily membership number at least 380 but fewer than 390;
  - w. 1.03 if the students in average daily membership number at least 390 but fewer than 400;
  - x. 1.02 if the students in average daily membership number at least 400 but fewer than 600;
  - y. 1.01 if the students in average daily membership number at least 600 but fewer than 900; and
  - z. 1.00 if the students in average daily membership number at least 900.
2. For each elementary district in the state, the superintendent of public instruction shall assign a weighting factor of:
- a. 1.25 if the students in average daily membership number fewer than 125;
  - b. 1.17 if the students in average daily membership number at least 125 but fewer than 200; and
  - c. 1.00 if the students in average daily membership number at least 200.
3. The school district size weighting factor determined under this section and multiplied by a school district's weighted average daily membership equals the district's weighted student units.

4. Notwithstanding the provisions of this section, the school district size weighting factor assigned to a district may not be less than the factor arrived at when the highest number of students possible in average daily membership is multiplied by the school district size weighting factor for the subdivision immediately preceding the district's actual subdivision and then divided by the district's average daily membership.

**SECTION 8. AMENDMENT.** Section 15.1-27-04 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-04. Per student payment rate.**

1.
  - a. The per student payment rate to which each school district is entitled for the first year of the biennium is ~~two~~ three thousand ~~seven~~ two hundred ~~sixty-five~~ fifty dollars.
  - b. The per student payment rate to which each school district is entitled for the second year of the biennium is ~~two~~ three thousand ~~eight~~ three hundred ~~seventy-nine~~ twenty-five dollars. ~~The per student amount is the basis for calculating state payments to school districts, as provided in sections 15.1-27-06 and 15.1-27-07.~~
2. In order to determine the state aid payment to which each district is entitled, the superintendent of public instruction shall multiply each district's weighted student units by the per student payment rate set forth in subsection 1.

**SECTION 9.** A new section to chapter 15.1-27 of the North Dakota Century Code is created and enacted as follows:

**Kindergarten payments - Determination.** Notwithstanding the provisions of section 15.1-27-35, the superintendent of public instruction shall determine the payments to which a school district is entitled for providing full-time kindergarten during the 2008-09 school year by using the district's 2008 kindergarten fall enrollment count.

**SECTION 10.** A new section to chapter 15.1-27 of the North Dakota Century Code is created and enacted as follows:

**Baseline funding - Determination - Minimum and maximum allowable increases.**

1. The superintendent of public instruction shall determine each school district's baseline funding per weighted student unit by:
  - a. Adding together all state aid received by the district during the 2006-07 school year;
  - b. Subtracting the amount received by the district during the 2006-07 school year for transportation aid, special education excess cost reimbursements, special education contracts, prior year funding adjustments, and per student payments for participation in educational associations governed by joint powers agreements; and

- c. Dividing the amount determined under subdivision b by the district's 2007-08 weighted student units.
  2. a. The superintendent of public instruction shall ensure that the total amount of state aid payable to a district per weighted student unit, for the 2007-08 school year, is at least equal to one hundred three and one-half percent of the baseline funding per weighted student unit, as established in subsection 1.
  - b. The superintendent of public instruction shall ensure that the total amount of state aid payable to a district per weighted student unit, for each school year after the 2007-08 school year, is at least equal to one hundred six percent of the baseline funding per weighted student unit, as established in subsection 1.
3. a. The superintendent of public instruction shall ensure that the total amount of state aid payable to a district per weighted student unit, less any amount received as equity payments under section 15.1-27-11 per weighted student unit, does not exceed, for the 2007-08 school year, one hundred seven percent of the baseline funding per weighted student unit, as established in subsection 1.
- b. Beginning with the 2008-09 school year, the maximum percentage of allowable growth in the baseline funding per weighted student unit provided in subdivision a must be annually increased by three percentage points, plus the district's share of any increased state aid for that year. Payments received by districts for the provision of full-day kindergarten do not constitute increases in state aid for purposes of this subdivision.

**SECTION 11. AMENDMENT.** Section 15.1-27-08 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-08. Per student payments - Unaccredited high schools.**

1. If a high school becomes unaccredited, the superintendent of public instruction shall determine the per student payment to which the school district is entitled during the first year in which the high school is unaccredited is the amount established in section 15.1-27-04. The school district is not entitled to the amount that results from applying the weighting factors provided in section 15.1-27-06. In each successive year, the per student payment to which the school district is entitled for each student in the unaccredited high school must be reduced by an additional two hundred dollars. by:
  - a. Applying the school district size weighting factor assigned under section 7 of this Act to all students in average daily membership in any public school in the district other than the unaccredited high school; and
  - b. Applying a weighting factor of 1.00 to all students in average daily membership in the unaccredited high school.
2. If the high school remains unaccredited for a second year, the superintendent of public instruction shall determine the per student payment to which the school district is entitled by:

- a. Applying the school district size weighting factor assigned under section 7 of this Act to all students in average daily membership in any public school in the district other than the unaccredited high school;
  - b. Applying a weighting factor of 1.00 to all students in average daily membership in the unaccredited high school; and
  - c. Reducing any payment to which the school district is entitled for each student in average daily membership in the unaccredited high school by two hundred dollars.
3. If the high school remains unaccredited for a third year, and each year thereafter, the superintendent of public instruction shall determine the per student payment to which the school district is entitled as provided in subsection 2, and the superintendent shall reduce the payment for each student as provided in subdivision c of subsection 2 by two hundred dollars each year.
  4. If a the high school regains its accreditation, the school district is entitled to the per student payments provided for accredited schools for the entire school year in which the school becomes accredited.

**SECTION 12. AMENDMENT.** Section 15.1-27-09 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-09. Per student payments - Unaccredited elementary schools.**

1. If an elementary school becomes unaccredited, the superintendent of public instruction may not reduce the per student payment to which the school district is entitled during the first year in which the school is unaccredited.
2. If a an elementary school district operates an remains unaccredited elementary school, the per student payment to which the school district is entitled during the first year in which the elementary school is unaccredited is the amount established in section 15.1-27-04. The school district is entitled to the amount that results from applying the weighting factors provided in section 15.1-27-07. In each successive for a second year, the superintendent of public instruction shall reduce the per student payment to which the school district is entitled for each student in average daily membership in the unaccredited elementary school ~~must be reduced by an additional~~ two hundred dollars.
3. If the elementary school remains unaccredited for a third year, and each year thereafter, the superintendent of public instruction shall reduce the payment for each student as provided in subsection 2 by two hundred dollars each year.
4. If a the elementary school regains its accreditation, the school district is entitled to the per student payments provided for accredited schools for the entire school year in which the school becomes accredited.

**SECTION 13. AMENDMENT.** Section 15.1-27-10 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-10. Per student payments - Special education.**

1. Except as provided in subsection 2, each biennium the superintendent of public instruction shall distribute moneys appropriated by the legislative assembly for per student special education payments to each school district in the state on the basis of students in average daily membership. The superintendent of public instruction shall forward the payments, as calculated under section 15.1-27-05, to eligible school districts in the same manner and at the same time that the superintendent distributes state aid payments. For purposes of this section, "special education" means the provision of special services to students who have special needs, including students who are gifted and talented. Expenditures under this section may not conflict with nonsupplanting and maintenance of effort provisions under the Individuals With Disabilities Education Act, 20 United States Code 1400 et seq.
2. Upon the written request of a school district, the superintendent of public instruction may forward all or a portion of the moneys any per student special education payments to which the a school district is entitled under this section directly to the special education unit of which the school district is a member.
3. 2. The superintendent of public instruction may withhold state special education funds due a school district if, in response to a complaint, the superintendent finds that the district is not providing a free appropriate public education to a student as required by law. Any withholding under this subsection may not exceed an amount equal to the cost of meeting the affected student's needs.

**SECTION 14. AMENDMENT.** Section 15.1-27-11 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-11. High school districts - Supplemental Equity payments.**

1. The superintendent of public instruction shall ~~calculate the average valuation of property per student by dividing the number of students in average daily membership in grades one through twelve in a high school district into the sum of:~~
  - a. ~~The district's latest available net assessed and equalized taxable valuation of property; plus~~
  - b. ~~All tuition payments and county revenue received by the district, divided by the total of the district's general fund levy, high school transportation levy, and high school tuition levy.~~
2. The superintendent of public instruction shall verify that:
  - a. The quotient arrived at under subsection 1 is less than the latest available statewide average taxable valuation per student;
  - b. The district's educational expenditure per student is below the most recent available statewide average cost of education per student;

- e. The district has a general fund levy of at least one hundred eighty mills; and
  - d. The district's unobligated general fund balance on the preceding June thirtieth is not in excess of thirty-five percent of its actual expenditures, plus twenty thousand dollars.
3. If the superintendent of public instruction determines that the district meets all the requirements of subsection 2, the superintendent shall:
- a. Determine the difference between the latest available statewide average taxable valuation per student and the average taxable valuation per student in the high school district;
  - b. Multiply the result determined under subdivision a by the number of students in average daily membership in grades one through twelve in the high school district;
  - c. Multiply the result determined under subdivision b by the number of general fund mills levied by the district in excess of one hundred fifty, provided that any mills levied by the district which are in excess of two hundred ten may not be used in this calculation; and
  - d. Multiply the result determined under subdivision c by a factor calculated by the superintendent of public instruction to result in the expenditure, over the course of the biennium, of the full amount provided for the purpose of this section.
4. The result of the calculations under this section is the supplemental payment to which a high school district is entitled, in addition to any other amount provided under chapter 45.1-27.:
- a. Divide the imputed taxable valuation of the state by the total average daily membership of all school districts in the state in order to determine the state average imputed taxable valuation per student.
  - b. Divide the imputed taxable valuation of each school district by the district's total average daily membership in order to determine each district's average imputed taxable valuation per student.
2. a. If a school district's imputed taxable valuation per student is less than eighty-eight and one-half percent of the statewide imputed taxable valuation per student, the superintendent of public instruction shall calculate the valuation deficiency by:
- (1) Determining the difference between eighty-eight and one-half percent of the state average imputed taxable valuation per student and the district's average imputed taxable valuation per student; and
  - (2) Multiplying that difference by the district's total average daily membership.
- b. Beginning July 1, 2008, if a school district's imputed taxable valuation per student is less than ninety percent of the statewide

imputed taxable valuation per student, the superintendent of public instruction shall calculate the valuation deficiency by:

- (1) Determining the difference between ninety percent of the state average imputed taxable valuation per student and the district's average imputed taxable valuation per student; and
        - (2) Multiplying that difference by the district's total average daily membership.
3. Except as provided in subsection 4, the equity payment to which a district is entitled under this section equals the district's valuation deficiency multiplied by the lesser of:
  - a. The district's general fund mill levy; or
  - b. One hundred eighty-five mills.
4. a. The equity payment to which a district is entitled may not exceed the district's taxable valuation multiplied by its general fund mill levy.
  - b. If a district's general fund levy is less than one hundred eighty-five mills, the superintendent of public instruction shall subtract the district's general fund mill levy from one hundred eighty-five mills, multiply the result by the district's taxable valuation, and subtract that result from the equity payment to which the district is otherwise entitled.
  - c. If a district's imputed taxable valuation per student is less than fifty percent of the statewide imputed taxable valuation per student, the payment to which the district is entitled under this section may not be less than twenty percent of the statewide imputed taxable valuation per student times the school district's average daily membership, multiplied by one hundred eighty-five mills.
5. In determining the amount to which a school district is entitled under this section, the superintendent of public instruction may not include any payments received by the district as a result of Public Law No. 81-874 [64 Stat. 1100; 20 U.S.C. 236 et seq.] and may not include in the district's average daily membership students who are dependents of members of the armed forces and students who are dependents of civilian employees of the department of defense.
6. For purposes of this section:
  - a. "General fund levy" includes a district's high school transportation levy and its high school tuition levy.
  - b. "Imputed taxable valuation" means the valuation of all taxable real property in the district plus an amount determined by dividing sixty percent of the district's mineral and tuition revenue by the district's general fund mill levy. Beginning July 1, 2008, "imputed taxable valuation" means the valuation of all taxable real property in the district plus an amount determined by dividing seventy percent of

the district's mineral and tuition revenue by the district's general fund mill levy.

- c. "Mineral revenue" includes all revenue from county sources reported under code 2000 of the North Dakota school district financial accounting and reporting manual as developed by the superintendent of public instruction in accordance with section 15.1-02-08.
- d. "Tuition revenue" includes all revenue reported under code 1300 of the North Dakota school district financial accounting and reporting manual as developed by the superintendent of public instruction in accordance with section 15.1-02-08. "Tuition revenue" does not include tuition income received specifically for the operation of an educational program provided at a residential treatment facility.

**SECTION 15. AMENDMENT.** Section 15.1-27-15 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-15. Per student payments - Isolated schools.**

1. a. ~~If an~~ An elementary school is isolated if it has fewer than fifty students in average daily membership and if fifteen percent or more of its students would have to travel beyond a fifteen-mile [24.15-kilometer] radius from their residences in order to attend another school; ~~the weighting factor provided under section 15.1-27-07 must be increased by twenty-five percent.~~ If the school has fewer than fifteen students, the payment received must be for fifteen students.
- b. For purposes of determining state aid, an elementary school that is isolated is presumed to have at least fifteen students in average daily membership.
2. a. ~~If a~~ A high school is isolated if it has fewer than thirty-five students in average daily membership and if fifteen percent or more of its students would have to travel beyond a ~~twenty-mile~~ [32.2-kilometer] fifteen-mile [24.1-kilometer] radius from their residences in order to attend another school; ~~the weighting factor provided under section 15.1-27-06 must be increased by twenty-five percent.~~ If the school has fewer than twenty students, the payment received must be for twenty students.
- b. For purposes of determining state aid, a high school that is isolated is presumed to have at least twenty students in average daily membership.

**SECTION 16. AMENDMENT.** Section 15.1-27-16 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-16. Per student payments - Cooperating districts.** ~~If, on or after July 4, 1997,~~ any school district receiving payments under this chapter cooperates with another school district for the joint provision of educational services under a plan approved by the superintendent of public instruction, ~~each cooperating district is entitled~~ the superintendent of public instruction shall, notwithstanding the provisions of section 7 of this Act, create and assign a separate weighting factor that allows the



cooperating districts to receive, for a period of four years, at least the same per student payment for each high school and elementary student as the district received prior to initiation a payment rate equivalent to that which each district would have received had the cooperative plan not taken effect. The superintendent of public instruction shall compute the separate weighting factor to four decimal places and that weighting factor is effective for the duration of the cooperative plan.

**SECTION 17. AMENDMENT.** Section 15.1-27-17 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-17. Per student payments - Reorganization of school districts - Separate weighting factor.**

1. If any school district receiving per student payments calculated under section 15.1-27-06 reorganized with another school district under chapter 15.1-12 before August 1, 1997, the school district resulting from the reorganization is entitled to receive the same per student payments for each high school student as each separate school district received for each high school student prior to the reorganization, for a period of four years.
  2. If any school district receiving per student payments calculated under this chapter reorganizes with another school district under chapter 15.1-12 after July 31, 1997, the school district resulting from the reorganization is entitled Notwithstanding the provisions of section 7 of this Act, the superintendent of public instruction shall create and assign a separate weighting factor to:
    - a. Any school district that reorganized on or before June 30, 2007, and which was receiving per student payments in accordance with section 15.1-27-17, as that section existed on June 30, 2007; and
    - b. Any school district that reorganizes on or after July 1, 2007.  2. a. The separate weighting factor must allow the reorganized school district to receive the same per student payments for each high school and elementary student as a payment rate equivalent to that which each separate school district would have received for each high school and elementary student prior to the reorganization, for a period of four years had the reorganization not taken place.
  - b. The separate weighting factor must be computed to four decimal places.
  - c. The provisions of this subsection are effective for a period of four years from the date of the reorganization.
3. The weighting factor for each district will be adjusted proportionately over a period of two years, following the period of time provided in subsection 1 or 2, until the adjusted weighting factor equals the weighting factor for the combined enrollment resulting from the reorganization. At the beginning of the fifth and at the beginning of the sixth years after the date of the reorganization, the superintendent of public instruction shall make proportionate adjustments in the assigned weighting factor so that beginning with the seventh year after the date of

the reorganization, the weighting factor that will be applied to the reorganized district is that provided in section 7 of this Act.

4. ~~Notwithstanding the provisions of any other law, no school district may receive less in per student payments for the first year of its reorganization than the total amount that the districts participating in the reorganization received in per student payments for the school year immediately preceding the reorganization. If less than a whole school district participated in a reorganization, the superintendent of public instruction shall prorate the payments to which the newly reorganized district is entitled under this subsection.~~

**SECTION 18. AMENDMENT.** Section 15.1-27-18 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-18. Per student payments - Eligibility - Minimum amounts.**

1. In order to be counted for the purpose of calculating per student payments, as provided for by this chapter, a high school student must be enrolled in at least four high school units. The units may include career and technical education courses offered in accordance with chapter 15-20.1 and courses that are approved by the superintendent of public instruction and offered by another high school district.
2. If a student is enrolled for graduation in a nonpublic school or if a student is taking fewer than four high school units and is enrolled in an approved alternative high school education program, the school district in which the student is enrolled is entitled to receive proportionate payments.
3. ~~Each high school district must receive at least as much in total per student payments as it would have received if it had the highest number of students in the next lower weighting category.~~

**SECTION 19. AMENDMENT.** Section 15.1-27-19 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-19. Summer school courses and programs - ~~Proportionate payments~~ Payments to school districts.**

1. ~~Each school district that offers summer school courses at the high school level is entitled to receive proportionate payments provided each course offered~~ Before a weight may be assigned under section 6 of this Act for a student enrolled in a high school summer course, the superintendent of public instruction shall verify that the course satisfies requirements for graduation, comprises at least as many clock-hours as courses offered during the regular school term, and complies with rules adopted by the superintendent of public instruction.
2. ~~A school district that offers remedial~~ Before a weight may be assigned under section 6 of this Act for a student enrolled in an elementary summer school programs at the elementary level is entitled to receive proportionate payments provided the programs comply program, the superintendent of public instruction shall verify that the program complies with rules adopted by the superintendent of public instruction.

3. The superintendent of public instruction may adopt rules regarding proportionate payments for remedial summer school programs at the elementary level and summer school courses at the high school level.
4. Proportionate payments made under this section during a biennium for summer school courses or programs may not exceed one and one-half percent of the total amount appropriated by the legislative assembly for state aid payments during the biennium, or eight million dollars, whichever is less. No more than seventy-five percent of the amount made available under this subsection may be used to support summer school courses at the high school level and no more than twenty-five percent of the amount made available under this subsection may be used to support remedial summer school programs at the elementary level.

**SECTION 20. AMENDMENT.** Section 15.1-27-20 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-20. Per student State aid payments - Claim by school district - Appeal.**

1. Upon the completion of student registration and in no event later than September tenth of each year, the business manager of a school district claiming payments from state funds under the provisions of this chapter shall file a claim in the form and manner prescribed by the superintendent of public instruction. The business manager must provide the number of registered high school and elementary school students for whom payments are claimed and any other information requested by the superintendent of public instruction.
2. The superintendent of public instruction shall compute the per student payments on the basis of the previous year's average daily membership less the number of students attending school during the current school year in another district under the provisions of open enrollment or the current year's fall enrollment, whichever provides the greater total payment. The superintendent shall make adjustments 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, for grade levels that existed in both years. The greater of the two preceding years' average daily membership must be used in computing any adjustment in a district's per student aid payments.
3. School districts educating children of agricultural migratory workers and school districts offering approved summer courses during the months of June, July, and August are not restricted to payments for a one hundred eighty-day school term.
4. Upon termination of the school year, the business manager of each school district that has received payments from state funds under the provisions of this chapter shall file with the school board a verified statement of the name, residence, and membership of each student and the units of high school work taken by each enrolled student.

5. On or before June thirtieth of each year, the school board shall certify to the superintendent of public instruction, in the form and manner prescribed by the superintendent, the students in average daily membership for the recently completed school year. The superintendent shall notify the school district of any student average daily membership that is disallowed.
6. A Any school district claiming state aid payments under this chapter shall provide to the superintendent of public instruction, at the time and in the manner requested by the superintendent, all information necessary for the processing of the claim.
2. If the superintendent of public instruction denies a district's claim for state aid payments, in whole or in part, the district may appeal the determination of the superintendent by submitting a written appeal to filing a written notice with the superintendent of public instruction on or before September fifteenth of the year in which the, within thirty days from the date on which the district received the original determination is made. The superintendent of public instruction may modify the original determination if the evidence submitted by the district justifies a modification. Upon appeal, or in a case when no if a timely appeal is not made, the determination of the superintendent of public instruction is final.

**SECTION 21.** A new section to chapter 15.1-27 of the North Dakota Century Code is created and enacted as follows:

**General fund levy - Impact on state aid.**

1. If in the first year of the 2007-09 biennium the general fund levy of a school district is less than one hundred fifty mills, the superintendent of public instruction shall:
  - a. Determine the difference in mills between the district's general fund levy and one hundred fifty;
  - b. Multiply the difference in mills determined under subdivision a by the district's total taxable valuation; and
  - c. Subtract the dollar amount determined under subdivision b from the total amount of state aid to which the district is otherwise entitled.
2. If in the second year of the 2007-09 biennium and each year thereafter, the general fund levy of a school district is less than one hundred fifty-five mills, the superintendent of public instruction shall:
  - a. Determine the difference in mills between the district's general fund levy and one hundred fifty-five;
  - b. Multiply the difference in mills determined under subdivision a by the district's total taxable valuation; and
  - c. Subtract the dollar amount determined under subdivision b from the total amount of state aid to which the district is otherwise entitled.

**SECTION 22.** A new section to chapter 15.1-27 of the North Dakota Century Code is created and enacted as follows:

**Taxable valuation - Impact on state aid.**

1. If a school district's imputed taxable valuation per student is greater than one hundred fifty percent of the state average imputed taxable valuation per student, the superintendent of public instruction shall:
  - a. Determine the difference between the district's imputed taxable valuation per student and one hundred fifty percent of the state average imputed taxable valuation per student;
  - b. Multiply the dollar amount determined under subdivision a by the district's average daily membership;
  - c. Multiply the dollar amount determined under subdivision b by one hundred eighty-five mills;
  - d. Multiply the dollar amount determined under subdivision c by a factor of 0.75; and
  - e. Subtract the dollar amount determined under subdivision d from the total amount of state aid to which the district is otherwise entitled.
2. For purposes of this section, "imputed taxable valuation" means the valuation of all taxable real property in the district plus an amount determined by dividing the district's mineral and tuition revenue by sixty percent of the district's general fund mill levy. Beginning July 1, 2008, "imputed taxable valuation" means the valuation of all taxable real property in the district plus an amount determined by dividing seventy percent of the district's mineral and tuition revenue by the district's general fund mill levy.

**SECTION 23. AMENDMENT.** Section 15.1-27-35 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-35. Average daily membership - Calculation.**

1. Average daily membership is calculated at the conclusion of the school year by adding the total number of days that each student in a given ~~classroom~~ grade, school, or school district is in attendance during a school calendar and the total number of days that each student in a given ~~classroom~~ grade, school, or school district is absent during a school calendar, and then dividing the sum by ~~one~~ the greater of:
  - a. The school district's calendar; or
  - b. One hundred eighty.
2. For purposes of calculating average daily membership, all students are deemed to be in attendance on:

- ~~4.~~ a. The three holidays listed in subdivisions b through j of subsection 1 of section 15.1-06-02 and selected by the school board in consultation with district teachers;
  - ~~2.~~ b. The two days set aside for professional development activities under section 15.1-06-04; and
  - ~~3.~~ c. The two full days, or portions thereof, during which parent-teacher conferences are held or which are deemed by the board of the district to be compensatory time for parent-teacher conferences held outside regular school hours.
3. For purposes of calculating average daily membership:
- a. A student enrolled full time in any grade from one through twelve may not exceed an average daily membership of 1.00. The membership may be prorated for a student who is enrolled less than full time.
  - b. During the 2007-08 school year, a student enrolled full time in an approved regular education kindergarten program may not exceed an average daily membership of 0.50. Beginning with the 2008-09 school year, a student enrolled full time in an approved regular education kindergarten program may not exceed an average daily membership of 1.00. The membership may be prorated for a student who is enrolled less than full time.
  - c. A student enrolled full time, as defined by the superintendent of public instruction, in an approved early childhood special education program may not exceed an average daily membership of 1.00. The membership may be prorated for a student who is enrolled less than full time.

**SECTION 24.** A new section to chapter 15.1-27 of the North Dakota Century Code is created and enacted as follows:

**Average daily membership - Reduction in grade levels.** If a school district offers fewer grade levels than the district offered the previous school year, the superintendent of public instruction shall determine the district's average daily membership using only those grade levels that the district offers during the current school year.

**SECTION 25.** A new section to chapter 15.1-27 of the North Dakota Century Code is created and enacted as follows:

**Average daily membership - Dissolved school districts.** For purposes of determining state aid, the superintendent of public instruction shall amend the average daily membership of any school district that enrolls students who attended a dissolved school district during the school year prior to the dissolution.

**SECTION 26.** A new section to chapter 15.1-27 of the North Dakota Century Code is created and enacted as follows:

**Payments to school districts - Unobligated general fund balance.** The superintendent of public instruction shall determine the amount of payments due a school district and shall subtract from that the amount by which the unobligated

general fund balance of the district on the preceding June thirtieth is in excess of fifty percent of its actual expenditures, plus twenty thousand dollars. Beginning July 1, 2008, the superintendent of public instruction shall determine the amount of payments due a school district and shall subtract from that the amount by which the unobligated general fund balance of the district on the preceding June thirtieth is in excess of forty-five percent of its actual expenditures, plus twenty thousand dollars.

**SECTION 27.** A new section to chapter 15.1-27 of the North Dakota Century Code is created and enacted as follows:

**Payments to school districts - Unobligated general fund balance - Exception.** Notwithstanding the provisions of section 26 of this Act, the superintendent of public instruction may not include any distribution provided for in the final subsection of section 28 of chapter 167 of the 2005 Session Laws, as amended in 2007 Senate Bill No. 2013 and approved by the sixtieth legislative assembly, in determining the unobligated general fund balance of a school district.

**SECTION 28. AMENDMENT.** Section 15.1-28-03 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-28-03. State tuition fund - Apportionment - Payment.** On or before the third Monday in each January, February, March, April, August, September, October, November, and December, the office of management and budget shall certify to the superintendent of public instruction the amount of the state tuition fund. The superintendent shall apportion the fund among the school districts of the state in proportion to the number of school-age children residing in each district, as shown by the latest enumeration provided for by law and pay the amount apportioned to each school district. The superintendent shall make the payments required by this section at the same time as the per student payments required include the amount certified in determining the state aid payments to which each school district is entitled under chapter 15.1-27.

**SECTION 29. AMENDMENT.** Section 15.1-29-01 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-29-01. Education of students in bordering states - Payment of tuition.**

1. ~~Students~~ A student may attend a school in a bordering state in accordance with section 15.1-29-02 ~~under the following circumstances provided:~~
  - a.
    - (1) ~~A~~ The student who lives within forty miles [64.37 kilometers] of another state; or
    - (2) The student lives in a county bordering on another state ~~may, with the; and~~
  - b. The student has received approval of from the school board; ~~attend a public school in a bordering state.~~
  - b-. ~~A student who has attended a school district in a bordering state since; and including, the 1990-91 school year must be permitted to continue attending school in the district in the bordering state.~~

- e. ~~A student whose sibling attended an out-of-state school during or before the 1990-91 school year must be permitted to attend school in the district the sibling attended in the bordering state of the student's school district of residence.~~
2. If the school board of the district in which the student resides denies a request for a student's attendance in and payment of tuition to another state, the student's parent may appeal the decision to the three-member committee referenced in section 15.1-29-06.
    - a. If the three-member committee determines that the student meets the terms of subdivision b or c of subsection 1, the student may attend school in the bordering state and the board of the student's school district of residence shall pay the tuition.
    - b. If the three-member committee determines the student falls within the terms of subdivision a of subsection 1, then the three-member committee shall make its decision using the criteria specified in section 15.1-29-06.
    - c. Notwithstanding the provisions of this section, if a student's school district of residence does not provide for the education of kindergarten students, the district may not pay tuition for a kindergarten student to attend school in a bordering state.
    - d. Any decision by the three-member committee regarding the payment of tuition for high school, elementary, or kindergarten students may be appealed by the school board or by the student's parent to the state board of public school education. A decision by the state board is final.
  3.
    - a. ~~The superintendent of public instruction shall forward all state aid payments for a~~ A student attending an out-of-state school to under this section is deemed to be enrolled in the student's school district of residence for purposes of determining average daily membership.
    - b. The student's district of residence may reduce any tuition payment it must make to an out-of-state school by an amount commensurate with the tuition costs the district would be entitled to receive as compensation for a student from the out-of-state district enrolled in its school.
  4. Nothing in this section requires that a school district of residence provide student transportation or payments in lieu of transportation for students attending out-of-state schools.

**SECTION 30. AMENDMENT.** Section 15.1-29-02 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-29-02. Education of students in bordering states - Contract - Tuition.**

1. A school district may contract with a school district in a bordering state for the education of students. A contract between school districts must provide for the payment of tuition at an agreed-upon amount.



2. ~~For purposes of per student payments and tuition apportionment payments, a~~ A student who attends school in a bordering state under a contract provided for by this section is deemed to be in attendance in the student's school district of residence. The student's school district of residence is liable to the school district of the bordering state for payments as provided in the contract.
3. A school district in this state may not agree to accept ~~students~~ a student from a bordering state unless the tuition payable equals or exceeds the ~~per student payment plus the tuition apportionment payment amount of~~ state aid that the district would have received from this state for a student in the same grade if ~~its~~ that student had been attending school in the bordering state.

<sup>98</sup> **SECTION 31. AMENDMENT.** Section 15.1-29-12 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-29-12. Tuition payments - Determination.**

1. Except as provided in section 15.1-29-13, a school district sending a student to another district for purposes of education shall pay the full cost of education incurred by the admitting district.
2.
  - a. The admitting district shall determine the cost of education per student for its kindergarten, elementary, and high school students on the basis of its average daily membership and those expenditures permitted in determining the cost of education per student in section 15.1-27-03.
  - b. To the cost of education per student, the admitting district shall add the latest available statewide average per student cost for extracurricular activities and the state average capital outlay per student. The state average capital outlay per student is determined by dividing the total of all school districts' annual expenditures for sinking and interest funds, tax receipts to the building funds, and general fund expenditures for capital outlay by the average daily membership of the state.
  - c. The admitting district shall subtract the following from the amount arrived at under subdivision b:
    - (1) ~~The weighted per student payment received by the admitting district, less the average amount per North Dakota resident student enrolled in the school district realized from the deductions applied under section 15.1-27-06 multiplied by the admitting district's school size weighting factor;~~ and
    - (2) Any credit for taxes paid to the admitting district by the student's parent.

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<sup>98</sup> Section 15.1-29-12 was also amended by section 1 of House Bill No. 1281, chapter 180.

- d. The amount remaining is the full cost of education incurred by the admitting district and the tuition amount payable for the individual student. This chapter does not affect the right of a school board to charge and collect tuition from students who are not residents of this state, in accordance with section 15.1-29-02.

<sup>99</sup> **SECTION 32. AMENDMENT.** Section 15.1-29-14 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-29-14. Student placement for noneducational purposes - Residency determination - Payment of tuition and tutoring charges.**

1. a. Except as provided in subdivision b, for purposes of applying this chapter, a student's school district of residence is the district in which the student's custodial parent or legal guardian resides:
  - (1) At the time that a state court, tribal court, juvenile supervisor, or the division of juvenile services issues an order requiring the student to stay for a prescribed period at a state-licensed foster home or at a state-licensed child care home or facility;
  - (2) At the time a county or state social service agency places the student, with the consent of the student's parent or legal guardian, at a state-licensed foster home or at a state-licensed child care home or facility;
  - (3) At the time the student is initially placed in a state-operated institution, even if the student is later placed at a state-licensed foster home or at a state-licensed child care home or facility; or
  - (4) At the time the student is placed voluntarily, by a parent or legal guardian, in a state-operated institution or in a state-licensed child care home, facility, or program, located outside the student's school district of residence, including those defined in sections 25-01.2-01 and 50-11-00.1.
- b. A determination regarding the student's school district of residence made under subdivision a is valid until the September fifteenth following the determination. On that date and each September fifteenth thereafter, the placing agency or the entity funding the student's placement shall determine the district in which the student's custodial parent or legal guardian resides and shall notify the district that it is deemed to be the student's district of residence for purposes of this chapter. If, however, the student is placed in accordance with paragraph 4 of subdivision a and the placement is privately funded, the administrator of the facility or program in which the student is placed shall determine the student's school district of residence and provide the notification required by this subdivision.

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<sup>99</sup> Section 15.1-29-14 was also amended by section 2 of House Bill No. 1046, chapter 179, and section 2 of House Bill No. 1092, chapter 274.

2. The student's school district of residence is obligated to pay:
  - a. All charges for tuition upon claim of the admitting district; and
  - b. All charges for tutoring services upon claim of an admitting facility, provided that the tutoring services are delivered by an individual who is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board.
3. The state shall pay the tuition and tutoring charges under subsection 2 from funds appropriated by the legislative assembly for state aid to schools if, on the September fifteenth after a student placement is made as provided for under subsection 1:
  - a. The student's custodial parent or legal guardian establishes residency outside this state;
  - b. A court orders a termination of parental rights with respect to the student's parents;
  - c. The student no longer has a custodial parent; or
  - d. The superintendent of public instruction has determined that all reasonable efforts to locate a parent or legal guardian have been unsuccessful.
4. If the student is voluntarily admitted to a state-licensed child care home or facility, or to a state-operated institution, the student's parent or, if one has been appointed, the student's legal guardian may appeal a determination under section 15.1-29-05 regarding the payment of tuition by filing a petition with the county superintendent of schools. Within fifteen days of receiving the petition, the three-member committee established under section 15.1-29-06 shall consult with the boards of the affected school districts and with the student's parent or legal guardian and render a decision regarding responsibility for the payment of tuition charges.
5. If the student's district of residence does not pay the required tuition, the admitting district or facility shall notify the superintendent of public instruction. Upon verification that tuition payments and tutoring charges are due and unpaid, the superintendent shall withhold an amount equal to the unpaid tuition and tutoring charges from state aid otherwise payable to the student's school district of residence until the tuition and tutoring charges that are due ~~has~~ have been fully paid.
6. An amount equal to the state average per student elementary or high school cost, depending on the student's grade of enrollment, is payable to the admitting district or facility as part of the cost of educating the student for the school year. The payment may not exceed the actual per student cost incurred by the admitting district or facility. The remainder of the actual cost of educating the student not covered by other payments or credits must be paid by the state, within the limits of legislative appropriations, from funds appropriated for the payment of special education contract charges in the case of a student with disabilities or from state aid payments to schools in all other cases.

7. If a student with disabilities placed in accordance with this section reaches age eighteen and continues to receive special education and related services, the student's school district of residence is deemed to be the same as that of the student's custodial parent until the special education services are concluded. The obligations of the student's school district of residence as provided in subsection 2 and the obligations of the state as provided in subsection 3 are applicable to all students described in this subsection.
8.
  - a. The placing agency or entity funding the student's placement shall provide written or electronic notice regarding an initial placement and all subsequent placements of a student to the superintendent of the student's school district of residence and to the superintendent of the admitting district:
    - (1) Within five working days after a placement is made under court order;
    - (2) Within five working days after an emergency placement is made; or
    - (3) At least ten working days prior to any other placement.
  - b. If, however, the student's parent or legal guardian voluntarily places the student in a state-operated institution or in a state-licensed child care home, facility, or program, located outside the student's school district of residence, including those defined in sections 25-01.2-01 and 50-11-00.1, and if the placement is privately funded, the administrator of the facility or program in which the student is placed shall determine the student's school district of residence and provide the notification required by this section.
  - c. The notice must include any information requested by the superintendent of public instruction for purposes of determining payment responsibility.
  - d. The placing agency shall afford the student's school district of residence reasonable opportunity to participate in permanency planning for the student.
9. Notwithstanding this section, educational services provided to a student by the youth correctional center are not subject to the payment of tuition and tutoring charges by either the student's school district of residence or the superintendent of public instruction.
10. For purposes of this section, "custodial parent" means the parent who has been awarded sole legal and physical custody of the student in a legal proceeding or, if there is currently no operative custody order, the parent with whom the student resides. If the student resides with both parents, then both are custodial parents.

**SECTION 33. AMENDMENT.** Section 15.1-29-15 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-29-15. Levy for tuition payments.** If the board of a school district approves tuition payments for students in grades seven through twelve or if the board is required to make tuition or tutoring payments under this chapter, the board may levy an amount sufficient to meet such payments, pursuant to subdivision c of subsection 1 of section 57-15-14.2.

**SECTION 34. AMENDMENT.** Section 15.1-31-03 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-31-03. Open enrollment - Per student State aid - Tuition apportionment.**

1. Once a student is enrolled in an admitting district, the student must remain enrolled in the admitting district until:
  - a. The student graduates;
  - b. The student relocates to another district;
  - c. The student's parent applies for enrollment in another school district; or
  - d. The student's parent notifies the student's school district of residence that the student will attend school in the school district of residence the following year.
2. ~~Payment for per student aid must be made to the admitting district in accordance with chapter 15.1-27.~~
3. ~~For purposes of tuition apportionment payments, a student whose application is approved under this section is considered a resident of the admitting district.~~
4. Except as specifically provided in this chapter, chapter 15.1-29 does not apply to students involved in open enrollment.

**SECTION 35. AMENDMENT.** Section 15.1-31-04 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-31-04. Open enrollment - Students with disabilities - Additional costs.** If an application under this chapter is approved for a student with a disability, the board of the student's school district of residence shall pay to the admitting district the costs incurred by the admitting district in providing special education and related services to the student up to a maximum each school year of two and one-half times the state average per student elementary or high school cost, depending on the student's enrollment level, plus twenty percent of all remaining costs. ~~The superintendent of public instruction shall reimburse the admitting district eighty percent of the remainder of the cost of educating the student with disabilities within the limits of legislative appropriations for that purpose. The superintendent of public instruction shall reimburse the student's school district of residence for all excess costs, as defined in section 15.1-32-18.~~

<sup>100</sup> **SECTION 36. AMENDMENT.** Section 15.1-31-07 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-31-07. Students not subject to this chapter.** If a student, as a result of a school district dissolution or reorganization, resides in a district other than the one the student chooses to attend at the time of the dissolution or reorganization, the student is not subject to this chapter and may attend school in the chosen school district. ~~Notwithstanding section 15.1-28-03, the superintendent of public instruction shall forward payments from the state tuition fund made on behalf of the student to the student's chosen school district. The student may not be considered a student in average daily membership in the student's school district of residence for purposes of section 15.1-31-02.~~

<sup>101</sup> **SECTION 37. AMENDMENT.** Section 15.1-32-08 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-32-08. School districts - Provision of special education.** Each school district shall provide special education, ~~singly or jointly with other districts,~~ and related services as a single district, as a member of a multidistrict special education unit in accordance with ~~this~~ chapter 15.1-33, or as a participating district in a regional education association under chapter 15.1-09.1. Each school district and entity providing special education shall cooperate with the director of special education and with the institutions of this state in the provision of special education.

**SECTION 38. AMENDMENT.** Section 15.1-32-14 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-32-14. Special education per student payments students - Contracts for placement.**

- ~~1. If a student with disabilities receives special education services, the superintendent of public instruction shall forward any per student payments, payable on behalf of that student, directly to the school district in which the student receives such services.~~
- ~~2. If a student with disabilities attends a special education summer program required by the student's individualized education program or services plan and approved by the superintendent of public instruction, the superintendent of public instruction shall forward any additional prorated per student payments, payable on behalf of the student, directly to the school district in which the student receives such services.~~
- ~~3. If a student who is enrolled in a nonpublic school receives special education services in a public school, the superintendent of public instruction shall forward a proportionate per student payment to the school district in which the student receives the services.~~

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<sup>100</sup> Section 15.1-31-07 was also amended by section 2 of House Bill No. 1199, chapter 181.

<sup>101</sup> Section 15.1-32-08 was also amended by section 8 of Senate Bill No. 2030, chapter 162.

4. ~~a.~~ If in the opinion of an individualized education program team or a services plan team a student is unable to attend a public school in the special education unit to which the student's school district of residence belongs, the student's school district of residence shall contract with another public school that:
  - (1) a. Does not belong to the same special education unit;
  - (2) b. Is located in this state;
  - (3) c. Is willing to admit the student; and
  - (4) d. Is able to provide appropriate services to the student.
- b. 2. The superintendent of public instruction shall approve in advance the terms of the contract and the services to be provided by the admitting school.
- e. 3. The contract must provide that the student's school district of residence agrees to pay to the district in which the student receives services, as part of ~~is~~ liable for the cost of educating the student for the school year, an amount equal to two and one-half times the state average per student elementary or high school cost, depending upon the student's level of enrollment, plus twenty percent of all remaining costs. The amount paid may not exceed the actual per student cost incurred by the admitting school, less any per student payment received on behalf of the student under this section.
  - d. The liability of the student's school district of residence must be reduced proportionately if the student attends the admitting school for less than an entire school year.
- e. 4. Upon being notified by the district in which the student receives services that tuition payments provided for by this section are due and unpaid the student's school district of residence has not paid for services that were provided to the student, the superintendent of public instruction, after verification, shall withhold all state aid payments to which the student's school district of residence is entitled, until the tuition due has been paid.
  - f. The superintendent of public instruction shall provide to the school district in which the student receives services, within the limits of legislative appropriations, an amount equal to eighty percent of the remainder of the actual cost of educating the student with disabilities not covered by other payments or credits required payments have been made.

**SECTION 39. AMENDMENT.** Section 15.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-32-15. Student with disabilities - Attendance at private institution or out-of-state public school.**

1. If in the opinion of an individualized education program team or an education services team a student is unable to attend a public school in the student's school district of residence because of a physical disability,

a mental disability, or a learning disability, and if no public school in the state will accept the student and provide the necessary services, the student's school district of residence shall contract with:

- a. A private, accredited, nonsectarian, nonprofit institution that is located within or outside of this state and which has the proper facilities for the education of the student; or
  - b. A public school located outside of this state that has proper facilities for the education of the student.
2. The superintendent of public instruction shall approve in advance the terms of the contract and the services to be provided by the admitting institution or school.
  3. The contract must provide that the student's school district of residence ~~shall pay to the institution or school, as part of~~ is liable for the cost of educating the student, ~~an amount for the school year equal to two and one-half times the state average per student elementary or high school cost, depending upon the student's level of enrollment, plus twenty percent of all remaining costs.~~
  4. ~~The amount paid may not exceed the actual per student cost incurred by the institution or school.~~
  5. ~~The superintendent of public instruction shall provide to the student's school district of residence, within the limits of legislative appropriations, an amount equal to eighty percent of the remainder of the actual cost of educating the student with disabilities not covered by other payments or credits.~~
  6. ~~The school district of residence is entitled to the per student payment for a student who receives services under this section.~~
  4. A student who receives services under this section is deemed to be enrolled in the student's school district of residence for purposes of determining average daily membership.

**SECTION 40. AMENDMENT.** Section 15.1-32-16 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-32-16. Transportation services - State reimbursement.** If a student's individualized education program or services plan requires the provision of transportation services, the student's school district of residence shall provide the services by any reasonably prudent means, including a regularly scheduled schoolbus, public transit, commercial transportation, chartered or other contracted transportation, and transportation provided by the student's parent or other responsible party.

**SECTION 41. AMENDMENT.** Section 15.1-32-18 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-32-18. Cost - Liability of school district for special education.** ~~If the cost of providing special education and related services to a student with disabilities, as determined by the superintendent of public instruction, exceeds the reimbursement provided by the state, the student's school district of residence is~~



liable to pay for each such student an amount over the state reimbursement up to a maximum each school year of two and one-half times the state average per student elementary cost of education or high school cost of education, depending on the student's level of enrollment, plus twenty percent of all remaining costs. The two and one-half times amount includes the amount that the school district is required to pay under section 15.1-32-14. The state is liable for eighty percent of the remaining cost of education and related services for each such student with disabilities within the limits of legislative appropriations.

1. Each year the superintendent of public instruction shall identify the approximately one percent of special education students statewide who are not eligible for cost reimbursement under section 15.1-29-14 and who require the greatest school district expenditures in order to provide them with special education and related services. This percentage represents the number of students that would qualify for excess cost reimbursement beyond the multiplier that is established in subsection 3.
2. The excess costs of providing special education and related services to these students are the responsibility of the state and the superintendent of public instruction shall reimburse the school districts for any excess costs incurred in the provision of special education and related services to the identified students.
3. "Excess costs" are those that exceed four and one-half times the state average cost of education per student and which are incurred by the special education students identified in subsection 1.
4. All costs of providing special education and related services to those students identified in subsection 1, other than excess costs reimbursed by the state, are the responsibility of the student's school district of residence.
5. In addition to any other reimbursements provided under this section, if a school district expends more than two percent of its annual budget for the provision of special education and related services to one student, the district shall notify the superintendent of public instruction. Upon verification, the superintendent shall reimburse the district for the difference between:
  - a. Two percent of the district's annual budget; and
  - b. The lesser of:
    - (1) The amount actually expended by the district for the provision of special education and related services to that student; or
    - (2) The amount representing four and one-half times the state average cost of education per student.

<sup>102</sup> **SECTION 42. AMENDMENT.** Section 15.1-33-02 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-33-02. Multidistrict special education units - School district participation.** A school district may join a multidistrict special education unit or together with other school districts form a multidistrict special education unit for purposes of planning and delivering special education and related services. ~~Each school district shall participate in a multidistrict special education unit or have on file with the superintendent of public instruction a plan for providing special education and related services as a single district.~~ If a school district wishes to join a multidistrict special education unit from which it has been excluded, the school district may petition the superintendent of public instruction. A school district may appeal a decision of the superintendent under this section to the state board of public school education.

**SECTION 43. AMENDMENT.** Section 15.1-36-02 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-36-02. School construction projects - Loans.**

1. The board of university and school lands may authorize the use of moneys in the coal development trust fund established pursuant to section 21 of article X of the Constitution of North Dakota and subsection 1 of section 57-62-02 to provide school construction loans, as described in this chapter. The outstanding principal balance of loans under this chapter may not exceed ~~forty~~ fifty million dollars. The board may adopt policies and rules governing school construction loans.
2. In order to be eligible for a loan under this section, the board of a school district shall:
  - a. Propose a construction project with a cost of at least one million dollars and an expected utilization of at least thirty years;
  - b. Obtain the approval of the superintendent of public instruction for ~~the~~ the construction project under section 15.1-36-01; and
  - ~~b.~~ c. Submit to the superintendent of public instruction an application containing all information deemed necessary by the superintendent, including potential alternative sources or methods of financing the construction project.
3. The superintendent of public instruction shall give priority to any district that meets the requirements for receipt of an equity payment under section 15.1-27-11.
4. If an eligible school district's imputed taxable valuation per student is less than eighty percent of the state average imputed valuation per student, the district is entitled to receive:

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<sup>102</sup> Section 15.1-33-02 was also amended by section 9 of Senate Bill No. 2030, chapter 162.

- a. A school construction loan equal to the lesser of eight million dollars or eighty percent of the actual project cost;
  - b. An interest rate discount equal to at least fifty but not more than two hundred basis points below the prevailing tax-free bond rates; and
  - c. A term of repayment that may extend up to twenty years.
5. If an eligible school district's imputed taxable valuation per student is equal to at least eighty percent but less than ninety percent of the state average imputed taxable valuation per student, the district is entitled to receive:
  - a. A school construction loan equal to the lesser of seven million dollars or seventy percent of the actual project cost;
  - b. An interest rate buydown equal to at least fifty but not more than two hundred basis points below the prevailing tax-free bond rates; and
  - c. A term of repayment that may extend up to twenty years.
6. If an eligible school district's imputed taxable valuation per student is equal to at least ninety percent of the state average imputed taxable valuation per student, the district is entitled to receive:
  - a. A school construction loan equal to the lesser of two and one-half million dollars or thirty percent of the actual project cost;
  - b. An interest rate discount equal to at least fifty but not more than two hundred basis points below the prevailing tax-free bond rates; and
  - c. A term of repayment that may extend up to twenty years.
7. The board of a school district may submit its loan application to the superintendent of public instruction before or after receiving authorization of a bond issue in accordance with chapter 21-03. If the vote to authorize a bond issue precedes the application for a loan, the application must be acted upon by the superintendent expeditiously but no later than one hundred eighty days from the date it is received by the superintendent.
4. 8. The superintendent of public instruction shall consider each loan application in the order it received approval under section 15.1-36-01.
5. 9. If the superintendent of public instruction approves the loan, the superintendent may determine the loan amount. ~~In determining the amount of a loan, the superintendent shall take into account the cost of the construction project and the fiscal capacity of the school district.~~
6. If the superintendent of public instruction approves the loan, the superintendent may determine the interest rate to be paid. The interest rate on a loan under this section may not exceed a rate of two percent below the net interest rate on comparable tax-exempt obligations as determined on the date the application is approved by the

superintendent pursuant to section 15.1-36-01. The interest rate may not exceed six percent.

7. A school district may not receive a loan under this section unless the superintendent of public instruction determines that the district has an existing indebtedness equal to at least fifteen percent of its taxable valuation. In determining a school district's existing indebtedness, the superintendent shall include outstanding indebtedness authorized by an election under section 21-03-07 but not issued and indebtedness authorized to be paid with dedicated tax levies under subsection 7 of section 21-03-07 but not issued, the term of the loan, and the interest rate, in accordance with the requirements of this section.

8. ~~10.~~ The superintendent of public instruction may adopt rules governing school construction loans.

9. ~~11.~~ For purposes of this section, a construction project means the purchase, lease, erection, or improvement of any structure or facility by a school board, provided the acquisition or activity is within a school board's authority and further provided that the acquisition or activity is estimated to cost in excess of fifty thousand dollars.

**SECTION 44.** A new section to chapter 15.1-36 of the North Dakota Century Code is created and enacted as follows:

**School construction projects - Reorganized districts - Interest subsidy.**

1. If under chapter 15.1-12 two or more school districts prepare a reorganization plan, agree in that plan to pursue a construction project, and obtain the approval of the superintendent of public instruction in accordance with this chapter, the newly reorganized district is eligible to receive up to three hundred basis points of interest rate buydown on the lesser of:

a. Thirteen million five hundred thousand dollars; or

b. A percentage of the total project cost determined by:

(1) Allowing five percent for each school district that participated in the reorganization;

(2) Allowing five percent for each one hundred-square-mile [259-square-kilometer] increment that is added to the square miles [kilometers] of the geographically largest district participating in the reorganization;

(3) Allowing five percent for every ten students added to the enrollment of the district having the greatest number of enrolled students and participating in the reorganization; and

(4) Capping the allowable percentage at ninety percent of the total project cost.

2. In addition to the requirements of subsection 1, the percentage of cost subsidy determined under subdivision b of subsection 1 must equal at least twenty percent of the total project cost.

**SECTION 45.** A new section to chapter 15.1-38 of the North Dakota Century Code is created and enacted as follows:

**English language learner - Definition.** English language learner means a student who:

1. Is at least five years of age but has not reached the age of twenty-two;
2. Is enrolled in a school district in this state;
3. Has a primary language other than English or comes from an environment in which a language other than English significantly impacts the individual's level of English language proficiency; and
4. Has difficulty speaking, reading, writing, and understanding English, as evidenced by a language proficiency test approved by the superintendent of public instruction and aligned to the state English language proficiency standards and the state language proficiency test.

**SECTION 46.** A new section to chapter 15.1-38 of the North Dakota Century Code is created and enacted as follows:

**New immigrant English language learner - Definition.** A new immigrant English language learner is an English language learner who was not born in the United States and has not attended school in the United States for more than three school years or the monthly equivalent of three school years.

<sup>103</sup> **SECTION 47. AMENDMENT.** Section 57-15-14 of the North Dakota Century Code is amended and reenacted as follows:

**57-15-14. Tax levy limitations in school districts.** The aggregate amount levied each year for the purposes listed in section 57-15-14.2 by any school district, except the Fargo school district, may 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 one hundred eighty-five 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 is 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.

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<sup>103</sup> Section 57-15-14 was also amended by section 3 of Senate Bill No. 2032, chapter 520.

2. In any school district having a total population of less than four thousand, 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.
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 aid payments provided in chapter 15.1-27 because of the deduction required in section 15.1-27-05, 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 one hundred eighty-five 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 section 15.1-27-05 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 must be submitted to the 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 is required. However, not fewer than twenty-five signatures are 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 number of qualified electors in the district must be determined by the county superintendent for such county in which such school is located. However, the approval of discontinuing either such authority does not affect the tax levy in the calendar year in which the election is held. The election must 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 48. TRANSPORTATION GRANTS - DISTRIBUTION.**

1. a. During the first year of the 2007-09 biennium, the superintendent of public instruction shall calculate the payment to which each school district is entitled based on the state transportation formula as it existed on June 30, 2001, except that the superintendent shall provide reimbursement at the rate of:
  - (1) Fifty-one and one-half cents per mile for schoolbuses having a capacity of ten or more passengers and transporting students within city limits;
  - (2) Seventy-three and one-half cents per mile for schoolbuses having a capacity of ten or more passengers and transporting students in rural areas; and

- (3) Forty cents per mile for vehicles having a capacity of nine or fewer passengers and transporting students in rural areas.
  - b. During the second year of the 2007-09 biennium, the superintendent of public instruction shall distribute to each school district the same amount the district received under this section for transportation services provided during the first year of the biennium.
2. The superintendent of public instruction shall use the latest available student enrollment count in each school district in applying the provisions of the transportation formula as it existed on June 30, 2001.
  3. If any moneys provided for transportation payments in the grants - transportation line item in Senate Bill No. 2013, as approved by the sixtieth legislative assembly, remain after application of the formula provided for in this section, the superintendent of public instruction shall prorate the remaining amounts according to the percentage of the total transportation formula amount to which each school district is entitled.
  4. Nothing in this section authorizes the reimbursement of any costs incurred in providing transportation for student attendance at extracurricular activities or events.

#### **SECTION 49. SCHOOL DISTRICT REORGANIZATION PLANNING**

**GRANTS.** The superintendent of public instruction may expend up to \$100,000 from the grants - state school aid line item in subdivision 1 of section 3 of Senate Bill No. 2013, as approved by the sixtieth legislative assembly, for the purpose of providing planning grants to school districts participating in reorganizations under chapter 15.1-12, for the biennium beginning July 1, 2007, and ending June 30, 2009. A grant provided under this section may not exceed \$25,000 and may not be awarded unless the student enrollment of the participating districts exceeds three hundred sixty. If a grant is provided and the recipient districts vote not to reorganize, the superintendent of public instruction shall withhold the grant amount that each district received under this section from any state aid payable to the district.

#### **SECTION 50. APPROPRIATION - SCHOOL DISTRICT - DEFERRED MAINTENANCE AND PHYSICAL PLANT IMPROVEMENT GRANTS.**

1. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$5,000,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of awarding to eligible school districts deferred maintenance and physical plant improvement grants, in accordance with the provisions of this section, for the biennium beginning July 1, 2007, and ending June 30, 2009.
2. If the office of management and budget determines by April 30, 2008, that the June 30, 2008, ending balance of the state general fund will be more than \$30,000,000 in excess of the amount predicted by the office of management and budget at the conclusion of the 2007 legislative session, the superintendent of public instruction shall forward to each eligible school district:
  - a. Ten thousand dollars; plus

- b. The school district's pro rata share of the remaining appropriation, calculated by using the latest available average daily membership of each school district.
3. If the general fund balance requirements of subsection 2 are not met and if the office of management and budget determines by April 30, 2009, that the June 30, 2009, ending balance of the state general fund will be more than \$30,000,000 in excess of the amount predicted by the office of management and budget at the conclusion of the 2007 legislative session, the superintendent of public instruction shall forward to each eligible school district:
  - a. Ten thousand dollars; plus
  - b. The school district's pro rata share of the remaining appropriation, calculated by using the latest available average daily membership of each school district.
4. Each school district accepting funds under this section shall apply those funds toward deferred maintenance and physical plant improvements and shall, by June 30, 2010:
  - a. Submit to the superintendent of public instruction documentation indicating the appropriate expenditure of the funds; or
  - b. Return the funds to the superintendent of public instructions for deposit in the general fund.
5. For purposes of this section, an "eligible school district" is a school district that:
  - a. Has a general fund levy equal to at least one hundred fifty mills;
  - b. Is not precluded from receiving state aid by the provisions of section 26 of this Act; and
  - c. Provides an equal monetary match for any amount received under this section.

**SECTION 51. NORTH DAKOTA COMMISSION ON EDUCATION IMPROVEMENT - MEMBERSHIP - DUTIES - REPORT TO LEGISLATIVE COUNCIL - REIMBURSEMENT FOR EXPENSES.**

1. The North Dakota commission on education improvement consists of:
  - a. (1) The governor or an individual designated by the governor, who shall serve as the chairman;
  - (2) One individual, appointed by the governor, who is employed as the superintendent of a high school district having more than one thousand students in average daily membership;
  - (3) One individual, appointed by the governor, who is employed as the superintendent of a high school district having more than two hundred twenty but fewer than one thousand students in average daily membership;



- (4) One individual, appointed by the governor, who is employed as the superintendent of a high school district having fewer than two hundred twenty students in average daily membership;
  - (5) One individual, appointed by the governor, who is employed as a school district business manager;
  - (6) The chairman of the senate education committee or the chairman's designee;
  - (7) The chairman of the house education committee or the chairman's designee;
  - (8) The senate minority leader or the leader's designee;
  - (9) One legislator appointed by the chairman of the legislative council; and
  - (10) The superintendent of public instruction or an assistant superintendent designated by the superintendent of public instruction; and
- b. One nonvoting member representing the North Dakota council of educational leaders, one nonvoting member representing the North Dakota education association, and one nonvoting member representing the North Dakota school boards association.
2. The commission shall establish its own duties and rules of operation and procedure, including rules relating to appointments, terms of office, vacancies, quorums, and meetings, provided that the duties and the rules do not conflict with any provisions of this section.
  3. The members of the commission are entitled to reimbursement for actual and necessary expenses incurred in the same manner as state officials. The superintendent of public instruction shall use up to \$40,000 from moneys appropriated in the grants - state school aid line item in section 3 of Senate Bill No. 2013, as approved by the sixtieth legislative assembly, to provide the reimbursements.
  4. The commission shall examine the current system of delivering and financing public elementary and secondary education and shall develop recommendations addressing educational adequacy, the equitable distribution of state education funds, the allocation of funding responsibility between federal, state, and local sources, and any other matters that could result in the improvement of elementary and secondary education in the state.
  5. The commission shall provide periodic reports to the governor and to the legislative council.

**SECTION 52. USE OF NEW MONEY - TEACHER COMPENSATION INCREASES - REPORTS TO LEGISLATIVE COUNCIL.**

1. During the 2007-09 biennium, the board of each school district shall use an amount equal to at least seventy percent of all new money received

by the district for per student payments to increase the compensation paid to teachers and to provide compensation to teachers who begin employment with the district on or after July 1, 2007.

2. For purposes of this section, the superintendent of public instruction shall calculate the amount of new money received by a district during the 2007-09 biennium by:
  - a. Determining the total amount of state dollars received by each district during the 2005-07 biennium as per student payments, tuition apportionment payments, special education per student payments, and English language learner payments;
  - b. Determining the total amount of state dollars received by each district during the 2007-09 biennium as per student payments, provided that neither equity payments under section 15.1-27-11 nor contingency distributions are to be included in the total; and
  - c. Subtracting the amount arrived at under subdivision a from the amount arrived at under subdivision b.
3. School districts providing educational services under a cooperative agreement approved by the superintendent of public instruction must, for purposes of this section, be treated as a single district.
4.
  - a. The provisions of this section do not apply to a school district if the board of the school district, after a public hearing at which public testimony and documentary evidence are accepted, determines in its discretion and by an affirmative vote of two-thirds of the members of the board that complying with the provisions of subsection 1 would place the school district in the position of having insufficient fiscal resources to meet the school district's other obligations.
  - b. Within ten days of the vote required by subdivision a, the school board shall notify the superintendent of public instruction of its action and shall file a report detailing the grounds for its determination and action.
  - c. The superintendent of public instruction shall report all notices received under this subsection to an interim committee designated by the legislative council.

**SECTION 53. MILITARY INSTALLATION SCHOOL DISTRICTS - ELIGIBILITY FOR STATE AID AND EQUITY PAYMENTS.** If at any time the board of a United States military installation school district assumes responsibility for the direct provision of education to its students, the superintendent of public instruction shall include all students being educated by the board in the district's average daily membership, both for purposes of determining any state aid to which the district is entitled and for purposes of determining any equity payments to which the district is entitled under section 15.1-27-11.

**SECTION 54. AREA CAREER AND TECHNOLOGY CENTERS - ESTABLISHMENT GRANTS - COST-SHARE INCENTIVES.**

1. The state board for career and technical education shall use \$1,200,000 from the grants line item in section 3 of House Bill No. 1019, as approved by the sixtieth legislative assembly, to award grants for the purpose of assisting with the establishment of at least two new area career and technology centers in areas of the state that, as of July 1, 2007, are not served by an existing center. The board shall award the grants on a competitive basis and shall require a twenty-five percent match by a number of students who will be served and to alignment of the proposed area career and technology center with existing educational associations governed by joint powers agreements.
2. The state board for career and technical education shall use \$800,000 from the grants line item in section 3 of House Bill No. 1019, as approved by the sixtieth legislative assembly, to increase cost-share incentives for area career and technology centers.

**SECTION 55. CONTINGENT MONEY.** If any money appropriated to the superintendent of public instruction for state aid payments to school districts remains after the superintendent complies with all statutory payment obligations imposed for the biennium beginning July 1, 2007, and ending June 30, 2009, the superintendent shall:

1. Use the first \$1,000,000, or so much of that amount as may be necessary, to pay any state obligations in excess of the amount appropriated for special education contract charges;
2. Use the next \$2,000,000, or so much of that amount as may be necessary, for the purpose of providing additional per student payments to school districts participating in regional education associations under chapter 15.1-09.1;
3. Use the next \$550,000, or so much of that amount as may be necessary, for the purpose of providing additional payments to school districts serving English language learners and new immigrant English language learners, in accordance with chapter 15.1-38;
4. Use the next \$200,000, or so much of that amount as may be necessary, for the purpose of providing additional payments to school districts offering an adult education program during the 2007-09 biennium; and
5. Use the remainder of the moneys to provide additional per student payments on a prorated basis according to the latest available average daily membership of each school district.

**SECTION 56. CONTINGENT TRANSFER BY BANK OF NORTH DAKOTA FOR SPECIAL EDUCATION.** If during the biennium beginning July 1, 2007, and ending June 30, 2009, the superintendent of public instruction determines that, using all available sources, there are insufficient funds with which to fully reimburse school districts for the excess costs of serving the one percent of special education students statewide who require the greatest school district expenditures in order to be provided with special education and related services, the industrial commission shall

transfer from the earnings and accumulated and undivided profits of the Bank of North Dakota the amount the superintendent of public instruction certifies is necessary to provide the statutorily required level of reimbursement. The superintendent of public instruction shall file for introduction legislation requesting that the sixty-first legislative assembly return any amount transferred under this section to the Bank of North Dakota.

**SECTION 57. REPEAL.** Section 15.1-09-46 of the North Dakota Century Code is repealed.

<sup>104</sup> **SECTION 58. REPEAL.** Sections 15.1-07-28, 15.1-27-05, 15.1-27-06, 15.1-27-07, 15.1-27-12, 15.1-27-14, 15.1-27-21, 15.1-27-32, 15.1-27-36, 15.1-27-37, and 15.1-27-38 of the North Dakota Century Code are repealed.

**SECTION 59. EXPIRATION DATE.** Section 27 of this Act is effective through June 30, 2007, and after that date is ineffective.

**SECTION 60. EMERGENCY.** Sections 27, 51, 57, and 59 of this Act are declared to be an emergency measure.

Approved May 3, 2007  
Filed May 3, 2007

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<sup>104</sup> Section 15.1-07-28 was also repealed by section 18 of Senate Bill No. 2030, chapter 162.

**CHAPTER 164****HOUSE BILL NO. 1270**

(Representatives Monson, Aarsvold, Herbel, R. Kelsch)  
(Senators Flakoll, Hacker)

**TEACHER PROFESSIONAL DEVELOPMENT DAYS**

AN ACT to amend and reenact section 15.1-06-04 of the North Dakota Century Code, relating to professional development days for teachers.

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

<sup>105</sup> **SECTION 1. AMENDMENT.** Section 15.1-06-04 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-06-04. School calendar - Length.**

1. During each school year, a school district shall provide for a school calendar of at least one hundred eighty days, apportioned as follows:
  - a. One hundred seventy-three full days of instruction;
  - b. Three holidays listed in subdivisions b through j of subsection 1 of section 15.1-06-02 and selected by the school board in consultation with district teachers;
  - c. Up to two full days during which parent-teacher conferences are held or which are deemed by the school board to be compensatory time for parent-teacher conferences held outside regular school hours; and
  - d. Two days for professional development activities.
2.
  - a. In meeting the requirements for two days of professional development activities under subsection 1, a school district may require that its teachers attend the North Dakota education association instructional conference and may pay teachers for attending the conference, provided attendance is verified.
  - b. In meeting the requirements for two days of professional development activities under subsection 1, a school district may consider attendance at the North Dakota education association instructional conference to be optional, elect not to pay teachers for attending the instructional conference, and instead direct any resulting savings toward providing alternate professional development opportunities.

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<sup>105</sup> Section 15.1-06-04 was also amended by section 2 of Senate Bill No. 2200, chapter 163.

- c. For purposes of this section, a "day for professional development activities" means:
- (1) Six hours of professional development activities, exclusive of meals and other breaks, conducted within a single day; or
  - (2) Two four-hour periods of professional development activities, exclusive of meals and other breaks, conducted over two days.
- ~~3.~~ 3. If a school district offers a four-hour period of professional development activities, as permitted in subdivision c of subsection 2, the school district may schedule instruction during other available hours on that same day and be credited with providing one-half day of instruction to students. The provisions of this subsection do not apply unless the one-half day of instruction equals at least one-half of the time required for a full day of instruction, as defined in this section.
- ~~4.~~ 4. A school district may not require the attendance of teachers in school or at any school-sponsored, school-directed, school-sanctioned, or school-related activities and may not schedule classroom instruction time nor alternate professional development activities on any day that conflicts with the North Dakota education association instructional conference.
- ~~4.~~ 5. A full day of instruction consists of:
- a. At least five and one-half hours for elementary students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction; and
  - b. At least six hours for high school students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction.
- ~~5.~~ 6. If a school's calendar provides for an extension of each schoolday beyond the statutorily required minimum number of hours, and if the extensions when aggregated over an entire school year amount to more than eighty-four hours of additional classroom instruction during the school year, the school is exempt from having to make up six hours of instruction time lost as a result of weather-related closure. In order to make up lost classroom instruction time beyond the six hours, the school must extend its normal school calendar day by at least thirty minutes.
- ~~6.~~ 7. A school that does not qualify under the provisions of subsection ~~3~~ 6 must extend its normal schoolday by at least thirty minutes to make up classroom instruction time lost as a result of weather-related closure.
- ~~7.~~ 8. If because of weather a school must dismiss before completing a full day of instruction, the school is responsible for making up only those hours and portions of an hour between the time of early dismissal and the conclusion of a full day of classroom instruction.

Approved April 13, 2007

Filed April 16, 2007

**CHAPTER 165****HOUSE BILL NO. 1261**

(Representatives R. Kelsch, Hanson, L. Meier)  
(Senators G. Lee, Wardner)

**SCHOOL DISTRICT NAMING**

AN ACT to amend and reenact section 15.1-07-02 and subsection 1 of section 15.1-12-10 of the North Dakota Century Code, relating to the naming of a school district.

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

**SECTION 1. AMENDMENT.** Section 15.1-07-02 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-07-02. School district - Name change.**

1. In order for the name of a school district to be changed, the question must be placed before and approved by a majority of the district's qualified voters at a district election. The school board may place the question on the ballot by resolution and shall place the question on the ballot if it receives a petition signed by qualified electors of the district equal in number to at least one-third of those who voted at the most recent annual school district election.
2. The proposed name change must include the phrase "school district" or "public school district" and may include no more than two additional words.
3. If a majority of the district's qualified voters approve the name change, the district must be renamed accordingly.
4. The business manager of the district shall provide notification of the new name to the county auditor, the county superintendent of schools, and the superintendent of public instruction.

**SECTION 2. AMENDMENT.** Subsection 1 of section 15.1-12-10 of the North Dakota Century Code is amended and reenacted as follows:

1. The reorganization plan required by section 15.1-12-09 must:
  - a. Include a map showing the boundaries of each participating district and of the proposed new district;
  - b. Include the demographic characteristics of each participating district, including the population per age group;
  - c. Include the number of students enrolled in each participating district during the current school year and during the ten preceding school years;
  - d. Include projected student enrollments for the ensuing ten years;

- e. Include the location and condition of all school buildings and facilities in each participating district and intended uses for the buildings and facilities;
- f. Address planned construction, modification, or improvement of school buildings and facilities located within the boundaries of the new district;
- g. Address planned course offerings by the new district;
- h. Include the planned administrative structure of the new district and the number of full-time equivalent personnel to be employed by the new district;
- i. Include the planned number of members who will constitute the board of the new district and the manner in which the members are to be elected;
- j. Address plans regarding student transportation;
- k. Identify other governmental entities, including multidistrict special education units and area career and technology centers, which may provide services to the new district;
- l. Include the taxable valuation and per student valuation of each participating district and the taxable valuation and per student valuation of the new district;
- m. Include the amount of all bonded and other indebtedness incurred by each participating district;
- n. Address the planned disposition of all property, assets, debts, and liabilities of each participating district, taking into consideration section 15.1-12-18;
- o. Include a proposed budget for the new district and a proposed general fund levy and any other levies, provided that tax levies submitted to and approved by the state board as part of a reorganization plan are not subject to mill levy limitations otherwise provided by law; ~~and~~
- p. Include the official name of the new district, which must include the phrase "school district" or "public school district" and which may include no more than two additional words; and
- q. Include any other information that the participating school districts wish to have considered by the county committee or the state board.

Approved March 5, 2007  
Filed March 6, 2007



**CHAPTER 166****HOUSE BILL NO. 1081**  
(Representatives Delzer, Wrangham)  
(Senator Freborg)**SCHOOL VEHICLE DRIVER REQUIREMENTS**

AN ACT to amend and reenact section 15.1-07-20 of the North Dakota Century Code, relating to requirements for drivers of schoolbuses and school vehicles.

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

<sup>106</sup> **SECTION 1. AMENDMENT.** Section 15.1-07-20 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-07-20. Schoolbus driver - School vehicle driver - Requirements.**

1. To be eligible to ~~drive~~ transport students or other passengers in a schoolbus or other school vehicle, ~~an~~ the individual must:
  - a. Hold a ~~valid~~ the appropriate class of North Dakota driver's license together with any special endorsement otherwise required by law;
  - b. Be free from communicable diseases;
  - c. Be in good physical health and have normal use of both hands, both feet, both eyes, and both ears;
  - d. Be of sound mental health;
  - e. Pass any drug and alcohol screening tests required by the school board; and
  - f. Be at least twenty-one years of age, unless the board of a school district determines that an individual not meeting this requirement can safely and adequately perform the required duties.
2. Each year, the board of a school district shall designate licensed health care professionals, as defined by department of transportation standards, to examine schoolbus and school vehicle drivers governed by subsection 1.
3. Prior to ~~commencing~~ duties as the driver of transporting students or other passengers in a schoolbus or other school vehicle, whether employed by the school district or by another entity with whom the school board has contracted, and every two years thereafter, an

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<sup>106</sup> Section 15.1-07-20 was also amended by section 1 of House Bill No. 1334, chapter 167.

individual shall present to the school board verification by a designated health care professional that the individual has been examined and meets the health requirements of this section.

4. This section does not ~~prohibit~~ apply to teachers or administrators who are employed by the district from and who are operating vehicles other than schoolbuses for the purpose of transporting students to regular or special events related to educational programs in which the students are enrolled.

Approved March 21, 2007  
Filed March 21, 2007

**CHAPTER 167****HOUSE BILL NO. 1334**

(Representatives Mueller, D. Johnson, L. Meier)  
(Senators Bakke, Robinson, Wardner)

**SCHOOL VEHICLE DRIVER REQUIREMENTS**

AN ACT to amend and reenact section 15.1-07-20 of the North Dakota Century Code, relating to requirements for certain school vehicle drivers.

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

<sup>107</sup> **SECTION 1. AMENDMENT.** Section 15.1-07-20 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-07-20. ~~Schoolbus~~ School vehicle driver - Requirements.**

1. ~~To be eligible to drive a schoolbus or other school vehicle, an~~

a. Except as otherwise provided in this subsection, if an individual transports students or other passengers in a school vehicle for which a commercial driver's license is not required, the individual must:

a. (1) Hold a ~~valid~~ North Dakota driver's license;

b. (2) Be free from communicable diseases;

c. (3) Be in good physical health and have normal use of both hands, both feet, both eyes, and both ears;

d. (4) Be of sound mental health;

e. (5) Pass any drug and alcohol screening tests required by the school board; and

f. (6) Be at least twenty-one years of age, unless the board of a school district determines that an individual not meeting this requirement can safely and adequately perform the required duties.

b. If the vehicle being used to transport students or other passengers under this subsection is a school vehicle for which a commercial driver's license is not required, but which is designed to seat ten to fifteen passengers, the individual must:

(1) Hold a North Dakota driver's license;

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<sup>107</sup> Section 15.1-07-20 was also amended by section 1 of House Bill No. 1081, chapter 166.

- (2) Meet the physical and medical requirements established for commercial vehicle drivers;
  - (3) Complete any annual training required by the superintendent of public instruction; and
  - (4) Be at least twenty-one years of age, unless the board of a school district determines that an individual not meeting this requirement can safely and adequately perform the required duties.
2. ~~Each year, the board of a school district shall designate licensed health care professionals, as defined by department of transportation standards, to examine schoolbus and school vehicle drivers.~~
3. ~~Prior to commencing duties as the driver of a schoolbus or other school vehicle, whether employed by the school district or by another entity with whom the school board has contracted, and every two years thereafter, an individual shall present to the school board verification by a designated health care professional that the individual has been examined and meets the health requirements of this section.~~
4. ~~This section does not prohibit teachers or administrators employed by the district from operating vehicles for the purpose of transporting students to regular or special events related to educational programs in which the students are enrolled.~~

The board of a school district may request, at any time, that a health care professional designated by the board examine an individual to determine if the individual meets the physical and medical requirements of subsection 1. Any examination costs that remain after application of the individual's insurance coverage are the responsibility of the board.

Approved April 16, 2007

Filed April 16, 2007

**CHAPTER 168****SENATE BILL NO. 2313**

(Senators Christmann, Flakoll, Nelson)  
(Representatives Delmore, R. Kelsch, Mueller)

**AUTOMATED EXTERNAL DEFIBRILLATOR  
DISTRIBUTION**

AN ACT to provide for the purchase and distribution of automated external defibrillators to schools.

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

**SECTION 1. Automated external defibrillators - Purchase and distribution.** The superintendent of public instruction shall purchase automated external defibrillators and distribute the defibrillators to school districts in this state for placement in schools or at the site of school-related activities.

Approved April 24, 2007  
Filed April 24, 2007

**CHAPTER 169****HOUSE BILL NO. 1305**

(Representative R. Kelsch)

**RURAL SCHOOL BOARD MEMBERSHIP**

AN ACT to amend and reenact section 15.1-09-04 of the North Dakota Century Code, relating to membership on rural school boards.

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

**SECTION 1. AMENDMENT.** Section 15.1-09-04 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-09-04. Rural members of school board - Definitions.**

1. Except as provided in subsection 2:
  - a. At least two members of a school board must be rural members if a district contains six or more sections of land, has a city within its boundaries, and a district population of two thousand or fewer.
  - b. At least one member of a school board must be a rural member if a district contains six or more sections of land, has within its boundaries a city of more than two thousand but fewer than fifteen thousand, and has at least twenty-five families residing on farms outside the corporate limits of the city but within the district and sending children to school in the district.
  - c. If the taxable valuation of agricultural property in the rural area of a district containing a city is greater than the taxable valuation of the urban area, the majority of the members of the school board must be rural members.
  - d. If the variance in population between the geographic voting areas of a school district is greater than ten percent, all qualified voters in the district may vote for each school board candidate.
2. A reorganization plan under chapter 15.1-12 may provide for school board membership requirements that are different from those in subsection 1.
- ~~3.~~ 3. For purposes of this section, a rural school board member is one who resides on a farm outside the corporate limits of a city or one who resides within a city that according to the latest federal census has a population of two hundred or fewer and is located within a district that has four or more incorporated cities.
- ~~4.~~ 4. For purposes of this section:
  - a. "Agricultural property" means property located outside the limits of an incorporated city and zoned agricultural.

- b. "Rural" means outside the limits of an incorporated city.

Approved March 9, 2007

Filed March 12, 2007

**CHAPTER 170****HOUSE BILL NO. 1383**

(Representatives L. Meier, Haas)

(Senators Dever, Potter)

**SCHOOL BOARD ELECTION PRECINCTS**

AN ACT to amend and reenact section 15.1-09-08 and subsection 1 of section 15.1-09-13 of the North Dakota Century Code, relating to precincts for school board elections.

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

**SECTION 1. AMENDMENT.** Section 15.1-09-08 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-09-08. School district elections - Candidate filings.** An individual seeking election to the board of a school district shall prepare and sign a document stating the individual's name and the position for which that individual is a candidate. A candidate shall also file a statement of interests as required by section 16.1-09-02. If the election is held in conjunction with a statewide election, these documents must be filed with the school district business manager, or mailed to and in the possession of the business manager, by four p.m. of the sixtieth day before the election. If the election is not held in conjunction with a statewide election, the document must be filed with the school district business manager, or mailed to and in the possession of the business manager, by four p.m. of the ~~thirty-third~~ sixtieth day before the election.

**SECTION 2. AMENDMENT.** Subsection 1 of section 15.1-09-13 of the North Dakota Century Code is amended and reenacted as follows:

1. At least thirty-five days prior to the annual election, the board of each school district shall designate one or more precincts for the election. The board shall arrange the precincts in a way that divides the electors of the district as equally as possible. ~~No precinct may have a population in excess of six thousand residents, as shown by the last federal decennial census.~~

Approved March 6, 2007

Filed March 7, 2007



**CHAPTER 171****SENATE BILL NO. 2057**

(Education Committee)

(At the request of the Education Standards and Practices Board)

**TEACHER CERTIFICATION**

AN ACT to amend and reenact subsection 3 of section 15.1-13-01 and section 15.1-18.1-02 of the North Dakota Century Code, relating to the definition of the profession of teaching and national board for professional teaching standards certification; to provide a statement of legislative intent; and to provide for a report to the legislative council.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 15.1-13-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Profession of teaching" means ~~the provision in a public school district of teaching services, administrative services, or other services, which require licensure by the education standards and practices board~~ providing services in an approved school as a teacher, counselor, librarian, curriculum director or supervisor, speech or language therapist, school psychologist, special educator, or administrator.

**SECTION 2. AMENDMENT.** Section 15.1-18.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-18.1-02. National board certification program - Recertification - Board duties.**

1. The board shall:
  - a. Inform teachers of the national board certification program and the scholarships and services the national board provides to teachers seeking certification.
  - b. Collect and review in the order received scholarship applications from individuals who are licensed to teach by the board or approved to teach by the board.
  - c. (1) Approve no more than seventeen applications per year under this subsection;
  - (2) During each year of the biennium, reserve three of the available scholarships under this subsection until October first for individuals teaching at low-performing schools. At that time, the three slots, if not filled, become available to all other applicants;
  - (3) Require the recipient for a scholarship under this subsection to serve during the school year as a full-time classroom teacher in a public or nonpublic school in this state; and

- (4) ~~Require~~ If available, require the recipient for a scholarship under this subsection to participate in mentoring programs developed and implemented in the employing school or school district.
- d. Ensure that all scholarship recipients under this subsection receive adequate information regarding the level of commitment required to acquire certification.
2. The board shall collect and review in the order received scholarship applications for national board recertification from individuals who are licensed to teach by the board or approved to teach by the board and:
- a. Approve no more than ~~two~~ three scholarship applications per year under this subsection;
- b. Require each recipient for a scholarship under this subsection to serve during the school year as a full-time classroom teacher in a public or nonpublic school in this state; and
- c. ~~Require~~ If available, require each recipient for a scholarship under this subsection to participate in mentoring programs developed and implemented in the employing school or school district.
3. If any individual who receives a scholarship under this section does not complete the certification process within the time allotted by the board, the individual must reimburse the state an amount equal to one-half of the amount awarded to the individual as a scholarship.
4. The board shall pay to any individual who received national board certification before July 1, 2007, one thousand dollars for each year the individual has maintained and continues to maintain national board certification, provided the individual continues to be employed by a school district in this state. An individual may not receive more than four thousand dollars under this subsection.
5. a. At the conclusion of each of the first four school years year after an individual receives national board certification, the board shall pay to an individual is entitled to receive an additional one thousand five hundred dollars for the life of the national board certificate if:
- a. (1) ~~The individual served~~ was employed during the school year as a full-time classroom teacher ~~in a public or nonpublic~~ by a school district in this state; and
- b. (2) The individual participated in any efforts of the employing school district to develop and implement teacher mentoring programs.
- b. The payment provided for in this subsection is available beginning with the 2007-08 school year.
6. A contract negotiated under chapter 15.1-16 may not preclude or limit the ability of a school district or any other entity, public or private, from providing any remuneration to a teacher who has obtained national board certification. Any remuneration received by a teacher as a

consequence of having obtained national board certification is in addition to any other compensation otherwise payable as a result of any contract negotiated under chapter 15.1-16.

**SECTION 3. LEGISLATIVE INTENT.** It is the intent of the sixtieth legislative assembly that funding for the provisions of this Act in the amount of \$77,000 be provided from the contingent distributions of per student and transportation state school aid payments for the 2005-07 biennium as provided for in section 28 of chapter 167 of the 2005 Session Laws and amended by the sixtieth legislative assembly.

**SECTION 4. REPORT TO LEGISLATIVE COUNCIL.** Before November 1, 2008, the education standards and practices board shall report to an interim committee designated by the legislative council regarding the payments made to individuals who hold national board certification as provided in section 15.1-18.1-02.

Approved May 2, 2007

Filed May 3, 2007

**CHAPTER 172****SENATE BILL NO. 2287**

(Senators Bakke, Horne, Nething)

(Representatives Mueller, Potter)

**TEACHING LICENSE SUSPENSION OR REVOCATION**

AN ACT to amend and reenact section 15.1-13-25 of the North Dakota Century Code, relating to cause for the suspension or revocation of teaching licenses.

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

**SECTION 1. AMENDMENT.** Section 15.1-13-25 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-13-25. Teaching license - Action by board - Causes.**

1. After holding a public hearing in accordance with chapter 28-32, the board may issue a written warning or reprimand to the individual, suspend the individual's teaching license, or revoke the individual's teaching license if:
  - a. The individual obtained a license by means of fraud, misrepresentation, or concealment of facts.
  - b. The board becomes aware of any fact or circumstance that would have caused the board to deny licensure had the board known of the fact or circumstance at the time of initial licensure.
  - c. The individual is incompetent, immoral, intemperate, or cruel.
  - d. The individual has been convicted of, has pled guilty to, or has pled nolo contendere to an offense deemed by the board to have a direct bearing upon an individual's ability to serve as a teacher or an administrator.
  - e. The board believes that the individual, having been convicted of an offense, has not been sufficiently rehabilitated under section 12.1-33-02.1.
  - f. The individual has refused to perform the duties of a teacher or an administrator.
  - g. The individual has breached a contract with a school district.
  - h. The individual knowingly taught in violation of chapter 15.1-18.
  - i. The individual is a school district administrator and knowingly permitted another individual to teach in violation of chapter 15.1-18.
  - j. The individual has violated this chapter or any rule adopted by the board.

2. Any action of the board taken under this section may be appealed to the district court of Burleigh County in accordance with chapter 28-32.

Approved May 4, 2007  
Filed May 4, 2007

**CHAPTER 173****HOUSE BILL NO. 1177**

(Representatives Wald, Haas, Herbel, Klein)  
(Senators G. Lee, Wardner)

**SCHOOL DISTRICT SALARY INCREASES**

AN ACT to create and enact a new section to chapter 15.1-16 of the North Dakota Century Code, relating to salary increases for unfillable positions.

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

**SECTION 1.** A new section to chapter 15.1-16 of the North Dakota Century Code is created and enacted as follows:

**Salary increase - Unfillable position.**

1.
  - a. If, after the conclusion of a school calendar, the board of a school district has a teaching position vacant and if the board, having done all things necessary and proper, is unable to fill that position by the forty-fifth day prior to the start of the district's school calendar with an individual who is highly qualified and who meets reasonable criteria established by the board, the board shall notify the superintendent of public instruction that:
    - (1) A teaching position is vacant;
    - (2) The board has done all things necessary and proper after learning of the vacancy to find a suitable and highly qualified candidate; and
    - (3) The board will be unable to meet the statutory requirements for school approval if the position remains unfilled.
  - b. Unless the superintendent of public instruction has reason to believe that the information contained in the notice as provided in subdivision a is not accurate, the superintendent shall authorize the board, notwithstanding the terms of any agreement negotiated under this chapter, to increase the compensation offered for that position to the extent deemed necessary by the board in order to attract a suitable and highly qualified individual. The compensation paid to a successful applicant under this section may not be reduced in future years.
2.
  - a. If a teaching position becomes vacant during a school calendar or less than forty-five days prior to the start of the school calendar, the board of a school district shall do all things necessary and proper to ensure that the vacancy causes only minimal disruption to the instruction of students and that the position becomes filled as quickly as possible by a highly qualified individual who meets the reasonable criteria established by the board. The board shall notify the superintendent of public instruction that the vacancy

exists and that the board will be unable to meet the requirements for school approval if the position remains unfilled.

- b. Upon receipt of the notice as provided in subdivision a, the superintendent of public instruction shall contact the several education associations in this state and ask that they assist the board of the school district in any way possible to locate and employ an individual under the terms of the district's existing negotiated agreement. Only when the superintendent determines that all reasonable efforts have been unsuccessful may the superintendent authorize the board, notwithstanding the terms of any agreement negotiated under this chapter, to offer the level of compensation it deems necessary in order to attract a suitable and highly qualified individual for the duration of the school calendar.
3. If an individual resigns from a teaching position with a district, the individual may be rehired by the board of that district to fill a vacancy, but the individual is not eligible to receive a level of compensation greater than that provided for in the district's negotiated agreement.
4. If an individual has taught in this state during the preceding twelve months, the individual is not eligible to receive a level of compensation greater than that provided for in the district's negotiated agreement.
5. This section is applicable to contracts that are negotiated under this chapter and which take effect after July 31, 2007.

Approved March 7, 2007  
Filed March 8, 2007

**CHAPTER 174****HOUSE BILL NO. 1172**

(Representatives Hanson, Delmore, N. Johnson, R. Kelsch, Mueller)  
(Senator Taylor)

**REQUIRED INSTRUCTION**

AN ACT to amend and reenact sections 15.1-21-01 and 15.1-21-02 of the North Dakota Century Code, relating to required instruction and North Dakota studies.

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

**SECTION 1. AMENDMENT.** Section 15.1-21-01 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-21-01. Education of students - Requirements Elementary and middle schools - Required instruction.** ~~The~~ In order to be approved by the superintendent of public instruction, each public and nonpublic elementary and middle school shall ensure that provide to students receive education instruction in:

1. English language arts, including reading, composition, creative writing, English grammar, and spelling.
2. Mathematics.
3. Social studies, including ~~the~~:
  - a. The United States Constitution; and;
  - b. United States history; geography, and government;
  - c. Geography;
  - d. Government; and
  - e. North Dakota studies, with an emphasis on the geography, history, and agriculture of this state, in the fourth and eighth grades.
4. Science, including agriculture.
5. Physical education.
6. Health, including physiology, hygiene, disease control, and the nature and effects of alcohol, tobacco, and narcotics.



<sup>108</sup> **SECTION 2. AMENDMENT.** Section 15.1-21-02 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-21-02. High schools - Required units.**

1. In order to be approved by the superintendent of public instruction, each public and nonpublic high school shall make available to each student:
  - a. Four units of English language arts;
  - b. Four units of mathematics;
  - c. Four units of science;
  - d. Four units of social studies, including one of world history and one of United States history;
  - e. One-half unit of health;
  - f. One-half unit of physical education;
  - g. Two units of fine arts, at least one of which must be music;
  - h. Two units of the same foreign language; and
  - i. Two units of career and technical education.
2. In addition to the requirements of subsection 1, each public and nonpublic high school shall make available to each student, at least once every two years, one-half unit of North Dakota studies, with an emphasis on the geography, history, and agriculture of this state.
3. Each unit which must be made available under ~~subsection 4~~ this section must meet or exceed the state content standards.
- ~~3.~~ 4. For purposes of this section, unless the context otherwise requires, "make available" means that:
  - a. Each public high school and nonpublic high school shall allow students to select units over the course of a high school career from a list that includes at least ~~all the units provided in subsection 4~~ those required by this section;
  - b. If a student selects a unit from the list required by ~~subsection 4~~ this section, the public high school or the nonpublic high school shall provide the unit to the student; and
  - c. The unit may be provided to the student through any delivery method not contrary to state law and may include classroom or individual instruction and distance learning options, including

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<sup>108</sup> Section 15.1-21-02 was also amended by section 1 of House Bill No. 1076, chapter 175, and section 1 of Senate Bill No. 2354, chapter 176.

interactive video, computer instruction, correspondence courses, and postsecondary enrollment under chapter 15.1-25.

- 4- 5. The board of a school district may not impose any fees or charges upon a student for the provision of or participation in units as provided in this section, other than the fees permitted by section 15.1-09-36.
- ~~5-~~ 6. If in order to meet the minimum requirements of this section a school district includes academic courses offered by a postsecondary institution under chapter 15.1-25, the school district shall:
- a. Pay all costs of the student's attendance, except those fees that are permissible under section 15.1-09-36; and
  - b. Transport the student to and from the location at which the course is offered or provide mileage reimbursement to the student if transportation is provided by the student or the student's family.
- ~~6-~~ 7. The requirements of this section do not apply to alternative high schools or alternative high school education programs.

Approved March 9, 2007

Filed March 12, 2007

**CHAPTER 175****HOUSE BILL NO. 1076**

(Education Committee)

(At the request of the Department of Corrections and Rehabilitation)

**YOUTH CORRECTIONAL CENTER CURRICULUM**

AN ACT to amend and reenact section 15.1-21-02 of the North Dakota Century Code, relating to exemption from high school curriculum requirements for the high school education program at the North Dakota youth correctional center; and to declare an emergency.

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

<sup>109</sup> **SECTION 1. AMENDMENT.** Section 15.1-21-02 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-21-02. High schools - Required units.**

1. In order to be approved by the superintendent of public instruction, each public and nonpublic high school shall make available to each student:
  - a. Four units of English language arts;
  - b. Four units of mathematics;
  - c. Four units of science;
  - d. Four units of social studies, including one of world history and one of United States history;
  - e. One-half unit of health;
  - f. One-half unit of physical education;
  - g. Two units of fine arts, at least one of which must be music;
  - h. Two units of the same foreign language; and
  - i. Two units of career and technical education.
2. Each unit which must be made available under subsection 1 must meet or exceed the state content standards.
3. For purposes of this section, unless the context otherwise requires, "make available" means that:

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<sup>109</sup> Section 15.1-21-02 was also amended by section 2 of House Bill No. 1172, chapter 174, and section 1 of Senate Bill No. 2354, chapter 176.

- a. Each public high school and nonpublic high school shall allow students to select units over the course of a high school career from a list that includes at least all the units provided in subsection 1;
  - b. If a student selects a unit from the list required by subsection 1, the public high school or the nonpublic high school shall provide the unit to the student; and
  - c. The unit may be provided to the student through any delivery method not contrary to state law and may include classroom or individual instruction and distance learning options, including interactive video, computer instruction, correspondence courses, and postsecondary enrollment under chapter 15.1-25.
4. The board of a school district may not impose any fees or charges upon a student for the provision of or participation in units as provided in this section, other than the fees permitted by section 15.1-09-36.
  5. If in order to meet the minimum requirements of this section a school district includes academic courses offered by a postsecondary institution under chapter 15.1-25, the school district shall:
    - a. Pay all costs of the student's attendance, except those fees that are permissible under section 15.1-09-36; and
    - b. Transport the student to and from the location at which the course is offered or provide mileage reimbursement to the student if transportation is provided by the student or the student's family.
  6. The requirements of this section do not apply to alternative high schools or alternative high school education programs.
  7. The requirements of subdivisions g and h of subsection 1 do not apply to the North Dakota youth correctional center.

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

Approved March 6, 2007  
Filed March 7, 2007

**CHAPTER 176****SENATE BILL NO. 2354**

(Senators Triplett, Flakoll, Warner)  
(Representatives Aarsvold, N. Johnson, Mueller)

**PHYSICAL EDUCATION INSTRUCTION**

AN ACT to amend and reenact section 15.1-21-02 of the North Dakota Century Code, relating to instruction in physical education.

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

<sup>110</sup> **SECTION 1. AMENDMENT.** Section 15.1-21-02 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-21-02. High schools - Required units.**

1. In order to be approved by the superintendent of public instruction, each public and nonpublic high school shall make available to each student:
  - a. Four units of English language arts;
  - b. Four units of mathematics;
  - c. Four units of science;
  - d. Four units of social studies, including one of world history and one of United States history;
  - e. One-half unit of health;
  - f. One-half unit of physical education during each school year, provided that once every four years the unit must be a concept-based fitness class that includes instruction in the assessment, improvement, and maintenance of personal fitness;
  - g. Two units of fine arts, at least one of which must be music;
  - h. Two units of the same foreign language; and
  - i. Two units of career and technical education.
2. Each unit which must be made available under subsection 1 must meet or exceed the state content standards.
3. For purposes of this section, unless the context otherwise requires, "make available" means that:

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<sup>110</sup> Section 15.1-21-02 was also amended by section 1 of House Bill No. 1076, chapter 175, and section 2 of House Bill No. 1172, chapter 174.

- a. Each public high school and nonpublic high school shall allow students to select units over the course of a high school career from a list that includes at least all the units provided in subsection 1;
  - b. If a student selects a unit from the list required by subsection 1, the public high school or the nonpublic high school shall provide the unit to the student; and
  - c. The unit may be provided to the student through any delivery method not contrary to state law and may include classroom or individual instruction and distance learning options, including interactive video, computer instruction, correspondence courses, and postsecondary enrollment under chapter 15.1-25.
4. The board of a school district may not impose any fees or charges upon a student for the provision of or participation in units as provided in this section, other than the fees permitted by section 15.1-09-36.
  5. If in order to meet the minimum requirements of this section a school district includes academic courses offered by a postsecondary institution under chapter 15.1-25, the school district shall:
    - a. Pay all costs of the student's attendance, except those fees that are permissible under section 15.1-09-36; and
    - b. Transport the student to and from the location at which the course is offered or provide mileage reimbursement to the student if transportation is provided by the student or the student's family.
  6. The requirements of this section do not apply to alternative high schools or alternative high school education programs.

Approved March 13, 2007

Filed March 14, 2007

**CHAPTER 177****SENATE BILL NO. 2309**

(Senators Nething, Bakke, Freborg)  
(Representatives Haas, Kaldor, R. Kelsch)

**HIGH SCHOOL GRADUATION AND COURSE  
REQUIREMENTS**

AN ACT to create and enact a new section to chapter 15.1-21 of the North Dakota Century Code, relating to high school coursework requirements; and to amend and reenact section 15.1-21-02.1 of the North Dakota Century Code, relating to high school graduation requirements.

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

<sup>111</sup> **SECTION 1. AMENDMENT.** Section 15.1-21-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-21-02.1. High school ~~coursework~~ graduation requirements.** Before a school district, a nonpublic high school, or the North Dakota division of independent study issues a high school diploma to a student, the student must have successfully completed at least twenty-one units of high school coursework from the minimum required curriculum offerings established by section 15.1-21-02. Beginning with the 2009-10 school year, the number of units required by this section increases to twenty-two and beginning with the 2011-12 school year, the number of units required by this section increases to twenty-four.

**SECTION 2.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**High school coursework requirements.**

1. Beginning with the 2008-09 school year, no student may graduate from a high school in this state unless the student demonstrates successful completion of the following:
  - a. Four units of English language arts;
  - b. Two units of mathematics;
  - c. Two units of science;
  - d. Three units of social studies, which may include one-half unit of North Dakota studies and one-half unit of multicultural studies;
  - e. One unit of physical education, which may include up to one-half unit of health; and

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<sup>111</sup> Section 15.1-21-02.1 was also amended by section 8 of Senate Bill No. 2127, chapter 156.

- f. One unit of a foreign or native American language, fine arts, or career and technical education.
2. The superintendent of public instruction shall work with each school district to identify course offerings that meet the requirements of subdivisions a through f of subsection 1.
3. Before September first of each year, each school district shall file a copy of its graduation requirements with the superintendent of public instruction.
4. A school district may not reduce its graduation requirements below those in existence on June 30, 2007.

Approved May 4, 2007  
Filed May 4, 2007



**CHAPTER 178****HOUSE BILL NO. 1491**  
(Representatives Gulleson, R. Kelsch)  
(Senator Heitkamp)**ELECTRONIC COURSE DELIVERY APPROVAL**

AN ACT to create and enact a new section to chapter 15.1-21 of the North Dakota Century Code, relating to electronic course delivery; to provide for a legislative council report; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**Electronic course delivery - Approval process.**

1. Before a person may provide elementary or high school courses electronically to a student, school, or school district in this state, the person must obtain annual approval from the superintendent of public instruction. The electronic delivery of a course includes online and technological delivery methods.
2. Before the superintendent of public instruction may grant approval to a person under this section, the superintendent shall verify that:
  - a. All courses offered by the person in this state are aligned with the state content and performance standards and if standards do not exist for a particular course, the criteria must ensure that the course content is sufficiently challenging for students, given the grade level at which it is offered;
  - b. All teachers involved in the electronic delivery of a course meet or exceed the qualifications and licensure requirements placed on the teachers by the state in which the course originates; and
  - c. All students receiving a course electronically have ongoing contact time with the teachers of the course.
3. The approval process provided for in this section does not apply to a course provided electronically between approved schools in this state.

**SECTION 2. REPORT TO LEGISLATIVE COUNCIL.** During the 2007-08 interim, the superintendent of public instruction shall provide a report to the legislative council regarding the planning and development of the electronic course delivery approval process to be implemented as provided in this Act.

**SECTION 3. EFFECTIVE DATE.** Section 1 of this Act becomes effective on July 1, 2009.

Approved April 13, 2007  
Filed April 16, 2007

**CHAPTER 179****HOUSE BILL NO. 1046**

(Representatives Drovdal, Kempenich)  
(Senator Bowman)

**CHARGES AMONG SCHOOL DISTRICTS**

AN ACT to amend and reenact section 15.1-29-04 and subsection 5 of section 15.1-29-14 of the North Dakota Century Code, relating to the required payment of tuition, transportation, and tutoring charges.

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

**SECTION 1. AMENDMENT.** Section 15.1-29-04 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-29-04. Payment of tuition and transportation by sending districts - Interest on late payments - Notification.** If the board of a school district agrees to pay tuition under this chapter, if it is required to pay tuition under this chapter, or if it is required to pay tuition and transportation under this chapter, the board of the sending district shall pay at least fifty percent of the annual ~~tuition~~ charge to the admitting district on or before December thirty-first and any remaining amount on or before May thirty-first. If payment is not received by the admitting district within thirty days after the date on which payment is due, simple interest at the rate of six percent per annum accrues to any amount due. If payment is not received by the admitting district within sixty days after the date on which payment is due, the admitting district shall notify the superintendent of public instruction.

<sup>112</sup> **SECTION 2. AMENDMENT.** Subsection 5 of section 15.1-29-14 of the North Dakota Century Code is amended and reenacted as follows:

5. If the student's district of residence does not pay the required tuition and tutoring charges, the admitting district or facility shall notify the superintendent of public instruction. Upon verification that tuition ~~payments and tutoring charges~~ are due and unpaid, the superintendent shall withhold ~~an amount equal to the unpaid tuition from~~ all state aid otherwise payable to the student's school district of residence until the ~~tuition total amount~~ due has been fully paid.

Approved March 12, 2007  
Filed March 13, 2007

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<sup>112</sup> Section 15.1-29-14 was also amended by section 2 of House Bill No. 1092, chapter 274, and section 32 of Senate Bill No. 2200, chapter 163.

**CHAPTER 180****HOUSE BILL NO. 1281**

(Representatives R. Kelsch, Hanson)

**SCHOOL DISTRICT TUITION PAYMENTS**

AN ACT to amend and reenact section 15.1-29-12 of the North Dakota Century Code, relating to school district tuition payments.

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

<sup>113</sup> **SECTION 1. AMENDMENT.** Section 15.1-29-12 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-29-12. Tuition payments - Determination.**

1. Except as provided in section 15.1-29-13, a school district sending a student to another district for purposes of education shall pay the full cost of education per student incurred by the admitting district.
2.
  - a. The admitting district shall determine the cost of education per student for its kindergarten, elementary, and high school students on the basis of its average daily membership and those expenditures permitted in determining the cost of education per student in section 15.1-27-03.
  - b. To the cost of education per student, the admitting district shall add the latest available statewide average per student cost for extracurricular activities and the state average capital outlay per student. The state average capital outlay per student is determined by dividing the total of all school districts' annual expenditures for sinking and interest funds, tax receipts to the building funds, and general fund expenditures for capital outlay by the average daily membership of the state.
  - c. The admitting district shall subtract the following from the amount arrived at under subdivision b:
    - (1) The weighted per student payment received by the admitting district, less the average amount per North Dakota resident student enrolled in the school district realized from the deductions applied under section 15.1-27-06; and
    - (2) Any credit for taxes paid to the admitting district by the student's parent.

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<sup>113</sup> Section 15.1-29-12 was also amended by section 31 of Senate Bill No. 2200, chapter 163.

- d. The amount remaining is the full cost of education per student incurred by the admitting district ~~and the~~. The tuition amount payable for the individual student is the lesser of:
- (1) The full cost of education per student incurred by the admitting district; or
  - (2) One hundred fifty percent of the state average full cost of education per student.
3. This ~~chapter~~ section does not affect the right of a school board to charge and collect tuition from students who are not residents of this state, in accordance with section 15.1-29-02.

Approved March 9, 2007  
Filed March 12, 2007

**CHAPTER 181****HOUSE BILL NO. 1199**

(Representative R. Kelsch)

**OPEN ENROLLMENT**

AN ACT to amend and reenact sections 15.1-31-01 and 15.1-31-07 of the North Dakota Century Code, relating to the open enrollment of students; to repeal section 15.1-31-02 of the North Dakota Century Code, relating to grounds for denial of an open enrollment application; and to declare an emergency.

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

<sup>114</sup> **SECTION 1. AMENDMENT.** Section 15.1-31-01 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-31-01. Open enrollment - Procedure.**

1. By ~~February~~ March first of the school year preceding the year of enrollment, a parent who wishes to enroll a student in a North Dakota school district other than the student's district of residence shall file an application for approval with the board of the admitting district and shall file a copy of the application with the student's district of residence. The superintendent of public instruction shall make the application forms available in each school district.
2. ~~By March first of the school year preceding the year of enrollment, the school board of the student's district of residence shall act on the application, notify the parent of the board's decision within five days, and if the application is approved, immediately transmit the application to the admitting district.~~
- ~~3.~~ By April first of the school year preceding the year of enrollment, the board of the admitting district shall approve or deny the application. The board of the admitting district shall notify the board of the district of residence and the student's parent of its decision within five days.
4. ~~3.~~ Notice of intent to enroll in the admitting district obligates the student to attend the admitting district during the following school year unless the school boards of the resident and the admitting districts agree in writing to allow the student to transfer back to the resident district or the student's parent relocates to another district.
- ~~5.~~ ~~4.~~ All applications must be reviewed in the order they are received.
- ~~6.~~ ~~5.~~ A student whose school district of residence does not offer the grade level in which the student requires enrollment may not participate in

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<sup>114</sup> Section 15.1-31-01 was also amended by section 1 of Senate Bill No. 2130, chapter 256.

open enrollment. For purposes of determining whether the grade level in which the student requires enrollment is offered, the several school districts cooperating with each other for the joint provision of education services under a plan approved by the superintendent of public instruction must be considered to be a single district.

- 7- 6. A child placed for purposes other than education in a group or residential care facility or in a residential treatment center is not eligible for open enrollment under this section.
- 8- 7. The board of a school district of residence and the board of an admitting district shall waive the application, consideration, and approval dates in this section for any student who, together with the student's parent, moves from the student's school district of residence to another school district and who wishes to enroll in a school district other than the district to which the student moved.
- 9- 8. The board of a school district of residence and the board of an admitting district shall waive the application, consideration, and approval dates in this section for any student who, together with the student's parent, moves into this state from out of state and who wishes to enroll in a school district other than the district to which the student moved.

<sup>115</sup> **SECTION 2. AMENDMENT.** Section 15.1-31-07 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-31-07. Students not subject to this chapter.** If a student, as a result of a school district dissolution or reorganization, resides in a district other than the one the student chooses to attend at the time of the dissolution or reorganization, the student is not subject to this chapter and may attend school in the chosen school district. Notwithstanding section 15.1-28-03, the superintendent of public instruction shall forward payments from the state tuition fund made on behalf of the student to the student's chosen school district. ~~The student may not be considered a student in average daily membership in the student's school district of residence for purposes of section 15.1-31-02.~~

**SECTION 3. REPEAL.** Section 15.1-31-02 of the North Dakota Century Code is repealed.

**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 16, 2007  
Filed March 16, 2007

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<sup>115</sup> Section 15.1-31-07 was also amended by section 36 of Senate Bill No. 2200, chapter 163.

**CHAPTER 182****SENATE BILL NO. 2108**

(Education Committee)

(At the request of the Superintendent of Public Instruction)

**DISABLED STUDENT DEFINED**

AN ACT to create and enact a new section to chapter 15.1-32 of the North Dakota Century Code, relating to students with disabilities resulting from noncategorical delays; and to amend and reenact subsection 4 of section 15.1-32-01 of the North Dakota Century Code, relating to the definition of a student with a disability for special education purposes.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 15.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

4. a. "Student with ~~disabilities~~ a disability" means an individual who is at least three years of age but who has not reached the age of twenty-one before September first of the year in which the individual turns twenty-one and who requires special education and related services because of ~~mental, physical, emotional, or learning characteristics~~ requires regular or special education and related services designed to meet the individual's educational needs. ~~The term includes an individual with mental:~~
- (1) Mental retardation;
  - (2) A hearing impairment, including deafness;  
~~deafness-blindness; a;~~
  - (3) Deaf-blindness;
  - (4) A speech or language impairment; a;
  - (5) A visual impairment, including blindness;
  - (6) An emotional disturbance; a;
  - (7) An orthopedic impairment; or autism, and an individual who has a;
  - (8) Autism;
  - (9) A traumatic brain injury;
  - (10) Other health impairment; or
  - (11) A specific learning disability; a traumatic brain injury, or other health impairment. ~~The term.~~

- b. "Student with a disability" includes a student ~~aged~~ age eighteen through twenty-one who is incarcerated in an adult correctional facility and who, in the last educational placement prior to incarceration, was identified as being a student with a disability and did not have an individualized education program or was identified as being a student with a disability and had an individualized education program.

**SECTION 2.** A new section to chapter 15.1-32 of the North Dakota Century Code is created and enacted as follows:

**Noncategorical delay.** If an individual who is at least three years of age but less than ten years of age exhibits a developmental profile in which cognitive, fine motor, vision, hearing, communication, preacademic, socialization, or adaptive skill acquisitions are significantly below that of same-age peers, and if the individual needs special education and related services, the school district may determine that the individual is a student with a disability as a result of a noncategorical delay.

Approved April 9, 2007  
Filed April 10, 2007



**CHAPTER 183****SENATE BILL NO. 2388**

(Senators O'Connell, G. Lee)  
(Representatives Froseth, Hunsakor, Klein)

**SCHOOL AID DISTRIBUTION**

AN ACT to amend and reenact section 28 of chapter 167 of the 2005 Session Laws, relating to the contingent distribution of state school aid payments; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 28 of chapter 167 of the 2005 Session Laws is amended and reenacted as follows:

**SECTION 28. CONTINGENCY.** If any moneys appropriated for per student payments and transportation payments in the grants - state school aid line item in House Bill No. 1013, as approved by the fifty-ninth legislative assembly, remain after payment of all statutory obligations for per student and transportation payments during the biennium beginning July 1, 2005, and ending June 30, 2007, and after the superintendent of public instruction has fulfilled any directives contained in section 27 of this Act, the superintendent shall distribute the remaining moneys as follows:

1. The superintendent of public instruction shall use the first \$25,748, or so much of that amount as may be necessary, for the purpose of reimbursing eligible school districts that received reduced amounts of state aid. For the purposes of this subsection, an eligible school district is one that received a reduction in state aid during the 2005-07 biennium because the district's general fund levy fell below one hundred forty mills as the result of an accounting oversight.
2. The superintendent of public instruction shall use the ~~first~~ next \$450,000, or so much of that amount as may be necessary, to provide additional payments to school districts serving English language learners in accordance with section 15.1-27-12.
- ~~2-~~ 3- The superintendent of public instruction shall use the next \$1,000,000, or so much of that amount as may be necessary, for the purpose of providing additional per student payments to school districts participating in eligible educational associations in accordance with section 32 of this Act.
- ~~3-~~ 4- The superintendent of public instruction shall use the remainder of the moneys to provide additional per student payments on a prorated basis according to the latest available average daily membership of each school district.

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

Approved May 4, 2007  
Filed May 4, 2007

**CHAPTER 184****HOUSE BILL NO. 1178**  
(Representatives Monson, Damschen)  
(Senator Olafson)**SCHOOL DISTRICT REORGANIZATION PAYMENTS**

AN ACT to amend and reenact section 33 of chapter 167 of the 2005 Session Laws, relating to the payment of school district reorganization bonuses; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 33 of chapter 167 of the 2005 Session Laws is amended and reenacted as follows:

**SECTION 33. APPROPRIATION - REORGANIZATION BONUSES - CONTINGENCY.**

1. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$759,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of providing a reorganization bonus to any school district having a reorganization effective on July 1, 2005, pursuant to section 15.1-12-11.1, for the biennium beginning July 1, 2005, and ending June 30, 2007.
2. a. If any moneys remain after the superintendent of public instruction completes the payment of bonuses ~~for any reorganization effective on July 1, 2005~~ as required by subsection 1, the superintendent shall provide a reorganization bonus to any other school district that reorganized on July 1, 2005. The total reorganization bonus to which a newly reorganized district is entitled under this subsection consists of:
  - (1) Fifty thousand dollars per one hundred-square-mile [259-square-kilometer] block, or a major portion thereof, included within the reorganized district and calculated by determining the lesser of the total square miles [kilometers] of the reorganized district or one thousand four hundred square miles [3625.98 square kilometers], and subtracting from that amount the square miles [kilometers] of the largest district or portion of a district involved in the reorganization;
  - (2) One thousand dollars per student calculated by determining the lesser of the total fall enrollment of the newly reorganized district or seven hundred fifty and subtracting from that amount the fall enrollment in the district or portion of the district that had the largest student population of those districts or portions of districts participating in the reorganization during the school year immediately preceding the effective date of the reorganization; and

- (3) Fifty thousand dollars for each whole school district that formed the reorganized district.
- b. The superintendent of public instruction shall distribute any reorganization bonus under this subsection on the effective date of this Act.
3. The superintendent of public instruction shall use ~~the~~ any remaining moneys to provide additional per student payments on a prorated basis, according to the latest available average daily membership of each school district.

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

Approved March 5, 2007  
Filed March 6, 2007

**CHAPTER 185****HOUSE BILL NO. 1248**

(Representatives R. Kelsch, Hanson, L. Meier)  
(Senator Flakoll)

**SCHOOL CONSTRUCTION APPROVAL AND APPEALS**

AN ACT to amend and reenact section 15.1-36-01 of the North Dakota Century Code, relating to school construction approval and appeals.

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

**SECTION 1. AMENDMENT.** Section 15.1-36-01 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-36-01. School construction projects - Approval.**

1. Notwithstanding the powers and duties of school boards provided by law, the superintendent of public instruction shall approve the construction, purchase, repair, improvement, modernization, or renovation of any public school building or facility before commencement of the project if the cost of the project, as estimated by the school board, is in excess of twenty-five thousand dollars.
2. The superintendent of public instruction may not approve a project unless the school district proposing the project:
  - a. Demonstrates the need for the project, the educational utility of the project, and the ability to sustain a stable or increasing student enrollment for a period of time at least equal to the anticipated usable life of the project or demonstrates potential utilization of the project by a future reorganized school district; and
  - b. Demonstrates the capacity to pay for the project under rules adopted by the superintendent of public instruction pursuant to chapter 28-32 ~~after receiving input from the state board of public school education.~~
3. a. If the superintendent of public instruction denies the project, the school board may appeal the superintendent's decision to the state board of public school education. In considering the appeal, the state board shall review:
  - (1) The need for the project;
  - (2) The educational utility of the project;
  - (3) The school district's ability to sustain a stable or increasing student enrollment for a period of time at least equal to the anticipated usable life of the project;
  - (4) The potential use of the project by a future reorganized school district;

(5) The capacity of the district to pay for the project; and

(6) Any other objective factors relative to the appeal.

b. The decision of the state board is final.

4. This section does not apply to any construction, purchase, repair, improvement, renovation, or modernization required as part of a plan of correction approved by the state fire marshal under section 15.1-06-09 unless the cost of the improvements exceeds seventy-five thousand dollars.
5. For purposes of this chapter, "facility" includes a public school parking lot, public school athletic complex, or any other improvement to real property owned by the school district.

Approved March 5, 2007

Filed March 6, 2007

# ELECTIONS

## CHAPTER 186

### HOUSE BILL NO. 1380

(Representatives L. Meier, Haas, Weiler)  
(Senator Dever)

### ELECTION PROCEDURES

AN ACT to amend and reenact section 16.1-01-02.2, subsection 4 of section 16.1-01-04, section 16.1-01-05.1, and subsections 1 and 2 of section 16.1-01-09 of the North Dakota Century Code, relating to general procedures for elections.

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

**SECTION 1. AMENDMENT.** Section 16.1-01-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-01-02.2. Special election - Special procedures.** Notwithstanding any other provision of law, the governor may call a special election to be held in ~~thirty to fifty~~ ninety days after the call if a special session of the legislative assembly has been held, any of the ninety-day period for the submission of a referendum petition to the secretary of state with respect to any measure enacted during the special session occurs during a regular legislative session, and a referendum petition has been submitted to refer a measure or part of a measure enacted during the special session. Notwithstanding any other provision of law, the governor may call a special election to be held in ~~thirty to fifty~~ ninety days after the call if a referendum petition has been submitted to refer a measure or part of a measure that establishes a legislative redistricting plan.

~~The secretary of state shall reduce all the deadlines, including those necessary for filing, appointments, and election material preparation, to ensure that the election is held as allowed by this section. If time constraints make it impossible for a county auditor to comply with the publication requirements of section 16.1-13-05, the sample ballot and election notice may be published only once. The provisions of chapter 46-02 concerning competitive bidding and of subsection 2 of section 16.1-01-04 and subsection 2 of section 16.1-05-03 with respect to election training sessions do not apply to this election.~~

**SECTION 2. AMENDMENT.** Subsection 4 of section 16.1-01-04 of the North Dakota Century Code is amended and reenacted as follows:

4. Pursuant to section 2 of article II of the Constitution of North Dakota, voting by individuals convicted and sentenced for ~~reason of~~ a felony must be limited according to chapter 12.1-33.

**SECTION 3. AMENDMENT.** Section 16.1-01-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-01-05.1. Voter lists - Addition or transfer of names.** ~~In a county in which the county auditor prepares a list of the persons who voted at a prior election and provides the list to voting precincts on election day, the county auditor, with the approval of the secretary of state, may~~ Through the use of the central voter file provided for in chapter 16.1-02, the secretary of state shall establish a procedure by which a person ~~county auditor~~ may transfer that a person's name from the voter list of one precinct to the voter list of another precinct in the ~~county state~~ state if that person establishes a new residence, and by which a person who establishes residence in the ~~county state~~ state may have that person's name placed on the voter list in the appropriate precinct. The procedure provided for in this section may not be used to require the registration of electors.

**SECTION 4. AMENDMENT.** Subsections 1 and 2 of section 16.1-01-09 of the North Dakota Century Code are amended and reenacted as follows:

1. a. 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. The filed signature forms must be originals.
- b. Upon receipt of a petition to initiate or refer a measure, the secretary of state shall draft a short and concise statement that fairly represents the measure. The statement must be submitted to the attorney general for approval or disapproval. An approved statement must be affixed to the petition before it is circulated for signatures, must be called the "ballot title", and must be placed immediately before the full text of the measure.
- c. The secretary of state and the attorney general shall complete their review of a petition in not less than five, nor more than seven, business days, excluding Saturdays.
2. No person may sign any initiative or referendum petition circulated pursuant to article III of the Constitution of North Dakota unless the person is a qualified elector. No person may sign any petition more than once, and each signer shall add the signer's complete residential address or rural route or general delivery 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 referendum or initiative petition must be in substantially the following on a form prescribed by the secretary of state containing the following information:

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.



## 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:

Name	Address
_____ (Chairman)	_____
_____	_____

## BALLOT TITLE

(To be drafted by the secretary of state, approved by the attorney general, and attached to the petition before circulation.)

## 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.]

## INSTRUCTIONS TO PETITION SIGNERS

You are being asked to sign a petition. You must be a qualified elector. This means you are eighteen years old, you have lived in North Dakota thirty days, and you are a United States citizen. All signers must add their complete residential address or rural route or general delivery address and the date of signing. Every qualified elector signing a petition must do so in the presence of the person circulating the petition.

## QUALIFIED ELECTORS

	Month, Day, Year	Name of Qualified Elector	Residential Address or Complete Rural Route or General Delivery 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. 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.

Approved April 13, 2007

Filed April 16, 2007

**CHAPTER 187****SENATE BILL NO. 2237**

(Senators J. Lee, Dever, Triplett)  
(Representative L. Meier)

**CENTRAL VOTER FILE LISTING**

AN ACT to amend and reenact sections 16.1-02-07, 16.1-02-09, 16.1-02-13, and 16.1-02-15 of the North Dakota Century Code, relating to the central voter file.

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

**SECTION 1. AMENDMENT.** Section 16.1-02-07 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-02-07. Reporting changes of names - Changes to records in the central voter file.** The state court administrator shall provide for the regular reporting to the secretary of state the name, address, date of birth, and county of residence, if available, of each individual eighteen years of age or older whose name was changed by divorce or any order or decree of the court since the last report. Within sixty days after receiving the report, the secretary of state shall make the name changes in the central voter file and notify by mail each individual whose name was changed that the individual's name has been changed accordingly in the central voter file. The secretary of state shall prepare and distribute a list of those individuals to each county auditor. Any individual who has obtained a protection order under section 14-07.1-03 or who is protected by a disorderly conduct restraining order under section 12.1-31.2-01 must be listed in the central voter file with a "secured active" designation. A "secured active" designation means a record maintained as an active voter for pollbook purposes, but otherwise is an exempt record. The state court administrator or the bureau of criminal investigation shall make available upon request of the secretary of state the name of each individual who has obtained such an order.

**SECTION 2. AMENDMENT.** Section 16.1-02-09 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-02-09. Department of transportation to report updates to the secretary of state - Changes to records in the central voter file.**

1. The department of transportation shall report regularly to the secretary of state any relevant changes and updates to records maintained by the department of transportation which may require changes and updates to be made to records of individuals contained in the central voter file.
2. The county auditor may change the designation of individuals contained in the central voter file whose change of address can be confirmed by the United States postal service. The secretary of state may provide each county auditor with periodic reports on any individual whose change of address can be confirmed by the United States postal service.

3. ~~If an individual makes a written request to the county auditor for removal of the individual's record from the central voter file, the county auditor shall change the designation of the individual contained in the central voter file to "inactive".~~
4. If a qualified elector makes a written request to the county auditor for inclusion in the central voter file, the county auditor shall collect the required information from the individual and add the individual's name to the central voter file with the designation of "inactive".

**SECTION 3. AMENDMENT.** Section 16.1-02-13 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-02-13. Information contained in pollbooks generated from the central voter file.** The county auditor shall generate a pollbook for each precinct in the county from the central voter file by the day before an election. With the exception of a record designated "secured active" and the unique identifier, which ~~is~~ ~~an~~ ~~are~~ exempt ~~record~~ records, the precinct pollbooks are open records under section 44-04-18. Between the fifteenth day before the election and the day of the election, no changes or updates to records of individuals contained in the central voter file or a pollbook generated from the central voter file may be made, other than changes related to the status of an individual voting early or an individual requesting and returning an absent voter's ballot. The secretary of state shall prescribe procedures for generating pollbooks and for transporting the pollbooks to the election judges for use on election day. Pollbooks generated from the central voter file must contain the following information for each individual contained therein:

1. The complete legal name of the individual.
2. The complete residential address of the individual.
3. The complete mailing address of the individual, if different from the individual's residential address.
4. The unique identifier generated and assigned to the individual.
5. The county, legislative district, city or township, school district, county commissioner district, if applicable, precinct name, and precinct number in which the individual resides. A ballot-style code identifying this information may be used in place of the information required by this subsection.
6. Any other information requested of and obtained from the individual deemed necessary by the secretary of state for the proper administration of the pollbook.

**SECTION 4. AMENDMENT.** Section 16.1-02-15 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-02-15. Voter lists and reports may be made available for election-related purposes - Funds received.** Except as otherwise provided by law, a voter list or a report generated from the central voter file may be made available to a candidate, political party, or a political committee for election-related purposes. Any information obtained by a candidate, political party, or political committee for election-related purposes from a list or report generated from the central voter file may not be sold or distributed for a purpose that is not election-related. Except for information identified in the central voter file under subsections 1, 2, 3, 5, 6, 7, and 8 of section 16.1-02-12, which may be made available to a candidate, political party, or political committee for election-related purposes, information in the central voter file is an exempt record. An individual's record that is designated as "secured active" is an exempt record and is not available to any candidate, political party, or political committee for any purpose. Any funds received by the secretary of state to pay the cost of producing a report or list of voters contained in the central voter file must be deposited in the secretary of state's general services operating fund.

Approved May 4, 2007

Filed May 4, 2007

**CHAPTER 188****HOUSE BILL NO. 1378**

(Representatives Haas, L. Meier)

(Senators Dever, Krebsbach)

**COUNTY VOTE CENTERS**

AN ACT to create and enact a new subsection to section 16.1-04-02 of the North Dakota Century Code, relating to polling places; and to provide a penalty.

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

**SECTION 1.** A new subsection to section 16.1-04-02 of the North Dakota Century Code is created and enacted as follows:

May utilize vote centers that contain all of the precincts in a county so that any qualified elector of the county may choose to cast a ballot in that polling location. Qualified electors may vote early at early voting precincts, by absentee ballot, at the polling location of their residential precinct, or at a county vote center. Vote center polling places must serve as the designated polling place for at least one precinct in the county in addition to serving as the site where any county voter may cast a ballot. An individual voting or attempting to vote more than once in any single election is guilty of a class A misdemeanor.

Approved March 21, 2007

Filed March 21, 2007

**CHAPTER 189****SENATE BILL NO. 2238**

(Senators J. Lee, Dever)  
(Representative L. Meier)

**ELECTION OFFICERS**

AN ACT to amend and reenact section 16.1-05-01, subsection 5 of section 16.1-05-02, subsections 3 and 4 of section 16.1-05-04, and subsections 4 and 5 of section 16.1-05-06 of the North Dakota Century Code, relating to election officers.

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

**SECTION 1. AMENDMENT.** Section 16.1-05-01 of the North Dakota Century Code is amended and reenacted 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 must have an election board in attendance. The election board must consist of an election inspector and at least two election judges. Counties utilizing polling places containing more than one precinct may choose to use one election board to supervise all precincts even if the precincts are within different legislative districts so long as each district chairman of each qualified political party is given the opportunity to have representation on the election board if desired.

1. The election inspector must be selected in the following manner:

- a. ~~In~~ Except as provided in subdivision b, 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 fill all vacancies occurring in those offices.
- b. In all ~~other~~ multiprecinct polling locations containing both rural and city precincts, the county auditor, with the approval of the majority of the board of county commissioners, shall appoint the election inspectors and fill all vacancies occurring in those offices. The selection must be made on the basis of the inspector's knowledge of the election procedure.
- c. The election inspector shall serve until a successor is named. If an inspector fails to appear for any training session without excuse, the office is deemed vacant and the auditor shall appoint an individual to fill the vacancy.

~~Except in the case of special elections, all~~ All appointments required to be made under this section must be made at least ~~twenty-one~~ forty days preceding an election.

2. The election judges ~~and poll clerks~~ for each polling place must be appointed in writing by the district chairs representing the two parties that cast the largest number of votes in the state at the last general election. In polling places in which over one thousand votes are cast in

any election, the county auditor may request each district party chair to appoint an additional election judge. ~~In polling places in which over three hundred votes are cast in any election, each district party chair may appoint additional poll clerks as determined by the county auditor.~~

3. The district party chair shall notify the county auditor of the counties in which the precincts are located of the appointment of the election judges ~~and poll clerks~~ at least ~~twenty-one~~ forty days before the primary, general, or special election. If this notice is not received within the time specified in this section, the county auditor shall appoint the judges ~~and poll clerks~~. If the county auditor has exhausted all practicable means to select judges ~~and clerks~~ from within the boundaries of the precincts within the polling place and vacancies still remain, the county auditor may select election judges ~~and clerks~~ who reside outside of the voting precinct but who reside within the polling place's legislative districts. If vacancies still remain, the county auditor may select election judges ~~and clerks~~ who reside outside of the legislative districts but who reside within the county.
4. 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 any election judge ~~or poll clerk~~ is disqualified under this chapter, the inspector shall remove that judge ~~or clerk~~ at once and shall fill the vacancy by appointing a qualified person of the same political party as that of the judge ~~or clerk~~ removed. If the disqualified judge ~~or clerk~~ had taken the oath of office as prescribed in this chapter, the inspector shall place the oath or affidavit before the state's attorney of the county.
5. With the approval of the majority of the board of county commissioners, the county auditor may appoint as many poll clerks as are necessary for the proper administration of a polling place. However, no fewer than two poll clerks must be appointed for each polling place. Poll clerks must be appointed based on their knowledge of election matters, attention to detail, and on any necessary technical knowledge.

**SECTION 2. AMENDMENT.** Subsection 5 of section 16.1-05-02 of the North Dakota Century Code is amended and reenacted as follows:

5. If any member of the election board fails to appear at the hour appointed for the opening of the polls, the remainder of the board shall select a person to serve in the absent person's place. In filling a vacancy in the office of election judge or clerk, the remainder of the board shall select a person of the absent person's political party if such a person is reasonably available. The office of election inspector may be filled by any qualified person without regard to political affiliation. If no members of the election board appear at the hour appointed for opening the polls, the qualified electors present shall call the county auditor, city auditor, or school business manager, as appropriate, for instructions and then orally elect a board as nearly as possible in conformity with the provisions of this section.

**SECTION 3. AMENDMENT.** Subsections 3 and 4 of section 16.1-05-04 of the North Dakota Century Code are amended and reenacted as follows:



3. The election inspector shall assign the poll clerks, an equal number from each political party represented on the election board, to perform the function of maintaining the ~~pollbooks~~ pollbook. The designated poll clerks shall maintain the ~~pollbooks~~ pollbook. ~~Each~~ The pollbook must contain the name and address of each person voting at the precinct and must be arranged in the form and manner prescribed by the secretary of state.
4. The members of the election board shall challenge the right of anyone to vote whom they know or have reason to believe is not a qualified elector by requiring the elector to complete and sign a voter's affidavit.

**SECTION 4. AMENDMENT.** Subsections 4 and 5 of section 16.1-05-06 of the North Dakota Century Code are amended and reenacted as follows:

4. The affidavit must include:
  - a. The name ~~and~~, present address, and any contact telephone number of the affiant and the address of the affiant at the time the affiant last voted.
  - b. The previous last name of the affiant if it was different when the affiant last voted.
  - c. A recitation of the qualifications for voting as set forth in section 16.1-01-04 and the rules for determining residence.
  - d. Notice of the penalty for making a false affidavit and that the county auditor may verify the affidavit.
  - e. A place for the affiant to sign and swear to the affiant's qualifications as a voter.
5. Written notice of the penalty for making a false affidavit and that the county auditor ~~may~~ shall verify the affidavits must also be prominently displayed at the polling place in a form prescribed by the secretary of state. An individual who falsely swears in order to vote is guilty of a class A misdemeanor and must be punished pursuant to chapter 16.1-01.

Approved April 5, 2007  
Filed April 5, 2007

## CHAPTER 190

### SENATE BILL NO. 2233

(Senator Dever)  
(Representative L. Meier)

### ELECTION BALLOTS AND VOTING

AN ACT to amend and reenact subsection 7 of section 16.1-06-04, sections 16.1-06-10.1 and 16.1-06-11, subsection 2 of section 16.1-06-17, and sections 16.1-06-18, 16.1-06-19, 16.1-06-20, 16.1-06-21, 16.1-06-22, and 16.1-06-23 of the North Dakota Century Code, relating to election ballots and voting systems.

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

**SECTION 1. AMENDMENT.** Subsection 7 of section 16.1-06-04 of the North Dakota Century Code is amended and reenacted as follows:

7. Provide two text boxes in the bottom right-hand corner of the ~~party~~ ballot. The first text box is to contain the words "All ballots, other than those used to vote absentee, must first be initialed by appropriate election officials in order to be counted." The second text box is to contain the words "Official Ballot", the name of the county, the name or number of the precinct ~~or the word "precinct" preceding a blank line upon which the judge or the inspector shall write the name or number of the precinct~~, the date of the election, and the word "initials" preceding a blank line where the judge or inspector shall initial the ballot.

<p>All ballots, other than those used to vote absentee, must first be initialed by appropriate election officials in order to be counted</p>	<p>Official Ballot _____ County _____ Precinct (Date of the Election) Initials _____</p>
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**SECTION 2. AMENDMENT.** Section 16.1-06-10.1 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-06-10.1. Electronic counting machines authorized - Sharing of machines.** The use of electronic counting machines is authorized in any election precinct upon finding and declaration by resolution of the city ~~or township~~ governing body, and also of the board of county commissioners of the county in which the election precinct is located, that the use is advisable or necessary in that precinct. Thereafter, electronic counting machines may be procured, on a temporary or permanent basis, under terms and conditions, including assumption and division of cost of acquisition and maintenance by the city ~~or township~~ and county, agreed upon by the respective governing bodies, provided the machines being procured have been certified for procurement and use in the state by the secretary of state according to section 16.1-06-26. Two or more counties may enter an agreement concerning the shared use and transport between counties of electronic counting machines and apportioning of expenses. Any electronic counting machine used in an election must be so constructed that when properly operated it registers or records correctly and accurately every vote cast.

**SECTION 3. AMENDMENT.** Section 16.1-06-11 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-06-11. Electronic voting systems authorized.** The use of electronic voting systems in accordance with the provisions of this chapter is hereby authorized in any election precinct upon finding and declaration by resolution of the city ~~or township~~ governing body, and also of the board of county commissioners of the county in which such election precinct is located, that such use is advisable or necessary in that precinct. Thereafter, a system or systems may be procured, on a temporary or permanent basis, under terms and conditions, including assumption and division of cost of acquisition and maintenance by the city ~~or township~~ and county, agreed upon by the respective governing bodies, provided the system or systems being procured have been approved and certified for procurement and use in the state by the secretary of state according to section 16.1-06-26. The system or systems may then be used in any state, county, city, or district election in that precinct or other voting area of which that precinct is a part.

**SECTION 4. AMENDMENT.** Subsection 2 of section 16.1-06-17 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~Four~~ One facsimile ~~diagrams~~ diagram of the entire face of the electronic voting system device as it will appear on election day.

**SECTION 5. AMENDMENT.** Section 16.1-06-18 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-06-18. Delivery of ballots.** ~~At the precinct election officials' training sessions provided for in section 16.1-05-03, the county~~ County auditors shall deliver, or cause to be delivered, by mail or other reliable method, to the inspector of elections in each precinct the official ballots, if available. The ballots must be delivered in sealed packages marked plainly ~~on the outside designating the number of ballots enclosed and with~~ the precinct for which the ballots are intended. The county auditor also shall deliver or cause to be delivered a suitable seal, ~~which has the name of the county inscribed thereon,~~ for the purpose of sealing the wrapper containing the ballots as provided in section 16.1-15-08.

**SECTION 6. AMENDMENT.** Section 16.1-06-19 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-06-19. Instructions, advertisements, maps, and ballots posted in polling places.** Each county auditor shall have ~~cards~~ posters printed, in large type, containing full instructions to electors on obtaining and voting ballots and a copy of section 16.1-01-12, any federal laws regarding prohibitions on acts of fraud and misrepresentations, and general information on voting rights under applicable federal and state laws, including instructions on how to contact the appropriate officials if these rights are alleged to have been violated. The county auditor shall furnish ~~ten~~ at least one such ~~cards poster~~ to the election inspector in each election ~~precinct~~ polling place who, before the opening of the polls, shall conspicuously post at least ~~one of the cards in each booth or compartment provided for the preparation of ballots~~ and at least one of the cards poster in the polling place. ~~Three of the official ballots without the initials of an election board member thereon must 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~~ polling place, 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. One of the newspaper publications

or copies must be posted conspicuously in the polling place on the morning of the election. Each county auditor shall furnish the election inspector in each ~~precinct~~ polling place with four copies of a map showing the election precinct's boundaries and information regarding the date of the election and the hours during which polling places will be open. The inspector shall, before the opening of the polls, post the maps and information regarding the date of the election and the hours during which polling places will be open at the entry to and in other conspicuous places around the polling place.

**SECTION 7. AMENDMENT.** Section 16.1-06-20 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-06-20. Election inspector and judges to display material and provide instruction.** In addition to other duties provided by law, the election inspector ~~shall post in a conspicuous manner at the voting place the two facsimile diagrams of the voting devices used to vote with electronic voting systems and three copies of the official ballot used with electronic voting systems.~~ The election inspector and judges shall provide adequate instruction on the use of the electronic voting device to each voter before the voter enters the voting booth.

**SECTION 8. AMENDMENT.** Section 16.1-06-21 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-06-21. Pollbooks delivered by county auditor - Contents - Inspector of elections to deliver.** The county auditor shall see that ~~two copies of the new one paper or electronic pollbook are~~ is delivered to the election inspector in each election precinct or polling place in the county. ~~The following information must be provided to the inspector and may be contained in each new pollbook:~~

- ~~1. A copy of the law prescribing the qualifications of electors.~~
- ~~2. A copy of the provisions of this title relating to the duties of inspectors, judges, and clerks of election.~~
- ~~3. A statement of the penalties imposed for offenses against the election laws.~~
- ~~4. Blanks for all entries required to be made in the pollbook or a preprinted listing of previous voters and blanks for the entry of new voters.~~

The election inspector shall deliver the ~~pollbooks~~ pollbook, or cause the ~~pollbooks~~ pollbook to be delivered, to the clerks of election in the inspector's ~~precinct~~ polling place on election day before the opening of the polls.

**SECTION 9. AMENDMENT.** Section 16.1-06-22 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-06-22. County to provide ballot boxes.** The board of county commissioners, at the expense of the county, shall provide suitable ballot boxes for each election ~~precinct~~ polling place in the county.

**SECTION 10. AMENDMENT.** Section 16.1-06-23 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-06-23. Secretary of state to send instructions and envelopes to county auditor to make returns.** The secretary of state shall send instructions for generating reports and envelopes, for all returns of votes required to be made to the secretary of state's office, to each county auditor with such printed directions on the envelope as the secretary of state deems necessary for the guidance of election officers in making returns according to law. The expense of furnishing such instructions and envelopes must be paid by the state.

Approved March 7, 2007  
Filed March 8, 2007

## CHAPTER 191

### SENATE BILL NO. 2235

(Senators Dever, Potter, Triplett)  
(Representative L. Meier)

## VOTING SYSTEM TESTING

AN ACT to amend and reenact section 16.1-06-15 of the North Dakota Century Code, relating to the security of the voting system programming and random testing of voting systems after an election.

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

**SECTION 1. AMENDMENT.** Section 16.1-06-15 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-06-15. Mandatory testing of electronic voting systems before each election and before after tabulation of ballots.**

1. All electronic voting systems used in this state must be tested to ascertain whether the automatic tabulating equipment will accurately count the votes cast for all offices and measures. The testing must be conducted prior to each election at which the system will be used. The testing must be done by the county auditor or county auditor's designee, and after each test, the testing materials and any preaudited ballots used during the test must be sealed and retained in the same manner as election materials after an election.
2. The test of an electronic voting system employing paper ballots must be conducted by processing a preaudited group of ballots on which are recorded a predetermined number of valid votes for each candidate and measure and must include for each office one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. During the test a different number of valid votes must be assigned to each candidate for an office and for and against each measure. If an error is detected, the cause of it must be ascertained and corrected, and an errorless count must be secured and filed as provided in this section.
3. The test must be conducted at least one week before the election. One week before the test is conducted, the county auditor must send the district chairman of each political party having a candidate on the ballot a notice of the test. The notice must state the time, place, and date of the test or tests and that the district chairman or district chairman's designee may attend.
4. At the conclusion of the test, the programming for each electronic voting device must be sealed within the device with a unique numbered seal that must be verified by the election inspector before the opening of the polls to make sure the programming has not been removed from the device.

5. After each election, the secretary of state shall order a random testing of the voting system programming for one precinct in each county of the state according to logic and accuracy testing procedures detailed in subsection 2 and as may be further defined by the secretary of state in writing. This test is to be conducted before the meeting of the county canvassing board.

Approved March 7, 2007  
Filed March 8, 2007

**CHAPTER 192****SENATE BILL NO. 2232**

(Senators Oehlke, Dever, Triplett)  
(Representative L. Meier)

**ABSENTEE VOTING**

AN ACT to amend and reenact sections 16.1-07-03 and 16.1-07-04, subsection 3 of section 16.1-07-05, subsections 1 and 2 of section 16.1-07-06, subsections 4 and 5 of section 16.1-07-08.1, section 16.1-07-09, and subdivision c of subsection 2 of section 16.1-07-15 of the North Dakota Century Code, relating to absentee voting.

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

**SECTION 1. AMENDMENT.** Section 16.1-07-03 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-03. Preparation and printing of ballots.** For all general, primary, or special state elections, for all other special elections held at the same time as a general or primary election, for all county elections, and for all city and school elections official ballots must be prepared within the time limits provided in section 16.1-07-04. ~~In the case of special elections wherein the election is called less than forty or twenty days, as the case may be, before the election day, or where certification of candidates does not take place before the forty-day or twenty-day limitations, the ballots for the use of absentee voters must be made available as soon as possible.~~ Only official ballots may be used as absentee ballots and no indication may be noted on such ballots that they are used by absentee voters except that the return envelope must be marked "ballot of absentee voter". The county auditor, at the same time other absentee ballots are prepared, shall prepare, and have printed and available, ballots for use by overseas citizens qualified to vote in this state pursuant to section 16.1-07-01.

**SECTION 2. AMENDMENT.** Section 16.1-07-04 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-04. When ballots furnished proper officials.** The county auditor, or any other officer required by law to prepare any general, special, or primary state election ballots or any county election ballots, shall prepare, have printed, and deliver to the county auditor at least forty days before the holding of any general, special, or primary state election a sufficient number of absent voter ballots for the use of all voters likely to require such ballots for that election. In city or school elections, the auditor or clerk of the city, the business manager of the school district, or any other officer required by law to prepare city or school election ballots shall prepare and have printed and available for distribution to the public at least ~~twenty~~ forty days before the holding of any city or school election a sufficient number of absent voter ballots for the use of all voters likely to require such ballots for that election. Officers authorized to distribute absent voter's ballots under this chapter shall ensure all ballots used as absent voter's ballots are secure at all times and accessible only to those persons under the officer's supervision for distribution.

**SECTION 3. AMENDMENT.** Subsection 3 of section 16.1-07-05 of the North Dakota Century Code is amended and reenacted as follows:



3. Spouses, children, or other dependents of active duty ~~uniformed service members of the United States armed forces or merchant marine~~ who are qualified electors and stationed as a family outside the United States at a location other than that individual's voting residential address are granted the same absentee voting rights as the individual's spouse, parent, or guardian has under subsection 2.

**SECTION 4. AMENDMENT.** Subsections 1 and 2 of section 16.1-07-06 of the North Dakota Century Code are amended and reenacted as follows:

1. Application for an absent voter's ballot must be made on a form, prescribed by the secretary of state, to be furnished by the proper officer of the county, city, or school district in which the applicant is an elector, on any form, approved by the secretary of state, or any blank containing the following information:
  - a. The applicant's name.
  - b. The applicant's current or most recent North Dakota residential address.
  - c. The applicant's mailing address.
  - d. The applicant's current ~~home~~ telephone number.
  - e. The election for which the ballot is being requested.
  - f. The date of the request.
  - g. An affirmation that the applicant has resided, or will reside, in the precinct for at least thirty days next preceding the election.
  - h. The applicant's signature.
  - i. A space for the voter to include the voter's precinct or voting location, if known.
  - j. The applicant's birth date and year.
  - k. The applicant's motor vehicle operator's license or nondriver identification number, if available.

If the applicant is unable to sign the applicant's name, the applicant shall mark (X) on the application in the presence of a disinterested person. The disinterested person shall print the name of the person marking the X below the X and shall sign the disinterested person's own name following the printed name together with the notation "witness to the mark".

2. The application for a qualified elector serving on active duty as a ~~uniformed service member of the United States armed forces, merchant marine,~~ or a family member who is a qualified elector and stationed outside the United States together with the individual's spouse, parent, or guardian at a location other than that individual's voting residential address must include the following additional information if the voter desires to vote by facsimile or electronic mail:

- a. Facsimile telephone number; or
- b. Electronic mail address.

**SECTION 5. AMENDMENT.** Subsections 4 and 5 of section 16.1-07-08.1 of the North Dakota Century Code are amended and reenacted as follows:

4. If the voter is temporarily residing outside the United States or is a uniformed service member of the United States armed forces, merchant marine, or a family member and a qualified elector stationed at a location other than that individual's voting residential address, the voter may use the federal write-in absentee ballot in general, special, and primary elections for local, state, or federal offices or measures.
5. If the voter is residing outside the United States, or is a uniformed service member of the United States armed forces, merchant marine, or a family member, and a qualified elector stationed outside the United States at a location other than that individual's voting residential address, the voter may use the federal write-in absentee ballot transmission envelope as an absentee ballot application simultaneously with the submission of the federal write-in absentee ballot if the voter is otherwise eligible to vote absentee in the jurisdiction where the request is submitted.

**SECTION 6. AMENDMENT.** Section 16.1-07-09 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-09. Canvassing of mailed absent voters' ballots received late.** In the case of congressional, state, county, city, or school district elections, if an envelope postmarked or otherwise officially marked by the United States postal service or other mail delivery system before the date of election and containing an absent voter's ballot is received by the officer too late to be forwarded to the proper voting precinct in time to be tabulated, the ballot must be tallied by the canvassing board of the county, the governing body of the city, or the school board of the school district, as the case may be, at the time the returns are canvassed. Any envelope without a postmark or other official marking by the United States postal service or other mail delivery system or with an illegible postmark or other official marking and containing an absentee voter's ballot must be received by mail by the proper officer within two days after the election to be canvassed and counted. An absent voter may personally deliver the absent voter's ballot to the appropriate officer's office at any time before five p.m. on the day before the election. Before forwarding any ballot to a canvassing board pursuant to this section, the officer forwarding the ballot shall print the date of receipt on the envelope. Upon receipt, the canvassing board shall ~~first~~ determine that the elector was qualified to vote in that precinct ~~and~~, that the elector did not previously vote in that precinct on the date of the election, and that the signatures on the absentee ballot application and the voter's affidavit were signed by the same person before allowing the ballot to be tallied.

**SECTION 7. AMENDMENT.** Subdivision c of subsection 2 of section 16.1-07-15 of the North Dakota Century Code is amended and reenacted as follows:

- c. The county auditor, with the consent of the board of county commissioners, shall designate a space in a ~~government controlled~~ public facility, accessible to the elderly and the physically disabled as provided in section 16.1-04-02, to locate the early voting precinct.

Approved April 5, 2007  
Filed April 5, 2007

**CHAPTER 193****HOUSE BILL NO. 1499**

(Representative Berg)  
(Senator Stenehjem)

**CAMPAIGN FINANCE REPORTING**

AN ACT to create and enact a new section to chapter 16.1-08.1 of the North Dakota Century Code, relating to campaign finance reporting; and to amend and reenact subsections 8 and 10 of section 16.1-08.1-01 and subdivision a of subsection 2 of section 16.1-10-02 of the North Dakota Century Code, relating to the definition of a political committee and a political purpose.

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

<sup>116</sup> **SECTION 1. AMENDMENT.** Subsections 8 and 10 of section 16.1-08.1-01 of the North Dakota Century Code are amended and reenacted as follows:

8. "Political committee" means any committee, club, association, or other group of persons which receives contributions or makes expenditures for political purposes and includes the following:
  - a. A political action committee, derived from a corporation, cooperative corporation, limited liability company, or an association that is prohibited from making direct contributions for political purposes under section 16.1-08.1-03.3, and which solicits or receives contributions or makes expenditures for political purposes;
  - b. A candidate committee, established to support an individual candidate seeking statewide office, that solicits or receives contributions for political purposes;
  - c. An organization governed by section 527 of the Internal Revenue Code [26 U.S.C. 527], which solicits or receives contributions or makes expenditures for political purposes;
  - d. A multicandidate political committee, established to support multiple groups or slates of candidates seeking public office, that solicits or receives contributions for political purposes; and
  - ~~d.~~ e. A measure committee that solicits or receives contributions for the purpose of aiding or opposing a measure to be voted upon by the voters of the state.
10. "Political purpose" means any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office

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<sup>116</sup> Section 16.1-08.1-01 was also amended by section 1 of House Bill No. 1375, chapter 194.

and includes using "vote for", "oppose", or any similar support or opposition language in any advertisement whether the activity is undertaken by a candidate, a political committee, a political party, or any person. In the period thirty days before a primary election and sixty days before a special or general election, "political purpose" also means any activity in which a candidate's name, office, district, or any term meaning the same as "incumbent" or "challenger" is used in support of or in opposition to the election or nomination of a candidate to public office. The term does not include activities undertaken in the performance of a duty of a state office or any position taken in any bona fide news story, commentary, or editorial.

**SECTION 2.** A new section to chapter 16.1-08.1 of the North Dakota Century Code is created and enacted as follows:

1. An organization governed by section 527 of the Internal Revenue Code [26 U.S.C. 527], which solicits or receives contributions or makes expenditures for political purposes, shall file a statement showing the name and mailing address of each contributor of an amount in excess of two hundred dollars in the aggregate for the reporting period and a listing of all expenditures of an amount in excess of two hundred dollars in the aggregate made for political purposes with the secretary of state. The statement must include the amount of each reportable contribution and the date the contribution was received. The statement must also include the amount of each reportable expenditure and the date the expenditure was made.
2. A preelection statement must be filed no later than the twelfth day before a primary, special, or general election and must be complete from the beginning of the calendar year through the twentieth day before the election.
3. A year-end statement covering the entire calendar year must be filed no later than the thirty-first day of January of the following year.
4. Even if such an organization has not received any contributions or made any expenditure in excess of two hundred dollars during the reporting period, the organization shall file a statement as required by this chapter.
5. A statement filed according to this section during the reporting period must show the following:
  - a. The gross total of all contributions received and expenditures made in excess of two hundred dollars;
  - b. The gross total of all contributions received and expenditures made of two hundred dollars or less; and
  - c. The cash on hand in the filer's account at the start and close of the reporting period.
6. The organization shall report the occupation, employer, and principal place of business of each person, or the political committee if not already registered according to state or federal law, that contributed five thousand dollars or more in the aggregate during the reporting period.

**SECTION 3. AMENDMENT.** Subdivision a of subsection 2 of section 16.1-10-02 of the North Dakota Century Code is amended and reenacted as follows:

- a. "Political purpose" means any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office and includes using "vote for", "oppose", or any similar support or opposition language in any advertisement whether the activity was undertaken by a candidate, a political committee, a political party, or any other person but does not include activities undertaken in the performance of a duty of state or political subdivision office. In the period thirty days before a primary election and sixty days before a special or general election, "political purpose" also means any activity in which a candidate's name, office, district, or any term meaning the same as "incumbent" or "challenger" is used in support of or in opposition to the election or nomination of a candidate to public office. The term does not include activities undertaken in the performance of a duty of a state office or a position taken in any bona fide news story, commentary, or editorial.

Approved April 10, 2007

Filed April 11, 2007

**CHAPTER 194****HOUSE BILL NO. 1375**

(Representatives Brandenburg, Grande, Haas, Kasper)  
(Senator Dever)

**CAMPAIGN FINANCE AND POLITICAL PARTY  
CONVENTION STATEMENTS**

AN ACT to create and enact section 16.1-08.1-02.1 of the North Dakota Century Code, relating to state political party convention statements; and to amend and reenact subsection 11 of section 16.1-08.1-01, sections 16.1-08.1-03.2 and 16.1-08.1-03.3, subsections 1 and 4 of section 16.1-08.1-03.9, subsections 2, 3, 4, and 5 of section 16.1-08.1-03.11, section 16.1-08.1-05, and subsection 1 of section 16.1-08.1-06 of the North Dakota Century Code, relating to campaign finance.

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

<sup>117</sup> **SECTION 1. AMENDMENT.** Subsection 11 of section 16.1-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

11. "Public office" means every ~~statewide or legislative~~ office to which persons can be elected by vote of the people under the laws of this state.

**SECTION 2.** Section 16.1-08.1-02.1 of the North Dakota Century Code is created and enacted as follows:

**16.1-08.1-02.1. State political party convention revenue and expense statement required.**

1. State political parties shall establish separate and segregated accounts for the management of state nominating conventions. All revenue obtained and expenditures made for the planning and running of a state convention must be accounted for in these accounts.
2. A postconvention statement must be filed with the secretary of state sixty days after the close of the state nominating convention. The reporting period for the postconvention statement begins on the first day of January of the reporting year and ends thirty days after the close of the state nominating convention.
3. A year-end statement covering the entire calendar year must be filed with the secretary of state no later than the thirty-first day of January of the following year even if no convention revenue was received or expenditures made within the calendar year.

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<sup>117</sup> Section 16.1-08.1-01 was also amended by section 1 of House Bill No. 1499, chapter 193.

4. The statement filed according to this section must show the following:
  - a. The cash on hand in the filer's convention accounts at the start and close of the reporting period;
  - b. The gross total of all revenue received and expenditures made of two hundred dollars, or less;
  - c. The gross total of all revenue received and expenditures made in excess of two hundred dollars;
  - d. The aggregated totals of all revenue received from a single person or entity in excess of two hundred dollars, the name of each person or entity, the mailing address of each person or entity, the date of the most recent receipt of revenue from each person or entity, and the purpose or purposes for which the aggregated revenue total was received from each person or entity;
  - e. The aggregated totals of all expenditures made to a single person or entity in excess of two hundred dollars, the name of each person or entity, the mailing address of each person or entity, the date of the most recent expense made to each person or entity, and the purpose or purposes for which the aggregated expenditure total was disbursed to each person or entity; and
  - f. A political party shall report the occupation, employer, and principal place of business of each person from whom five thousand dollars or more of revenue was received in the aggregate during the reporting period.
5. For the purposes of this section, the term entity is defined as any group consisting of or representing more than one person.
6. If a net gain from the convention is transferred to the accounts established for the support of the nomination or election of candidates, the total transferred must be reported as a contribution in the statements required by section 16.1-08.1-03.
7. If a net loss from the convention is covered by a transfer from the accounts established for the support of the nomination or election of candidates, the total transferred must be reported as an expenditure in the statements required by section 16.1-08.1-03.

**SECTION 3. AMENDMENT.** Section 16.1-08.1-03.2 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-08.1-03.2. Political committee registration.** A statewide candidate,<sup>1</sup> statewide candidate committee, political action committee, multicandidate committee, or a political measure committee, as described in section 16.1-08.1-01, ~~other than a political party and a committee organized in support of an individual legislative candidate,~~ shall register its name, address, and its agent's name and address with the secretary of state each calendar year in which it receives any contribution. The registration must be completed within fifteen business days of the receipt of any contribution or expenditure made and must be submitted with a registration fee of twenty-five dollars. A political committee that organizes and registers according to federal law and makes a disbursement in excess of two hundred dollars to a



nonfederal candidate seeking public office, a political party, or political committee in this state is not required to register as a political committee according to this section if the political committee reports according to section 16.1-08.1-03.7. Registration under this section does not reserve the name for exclusive use nor does it constitute registration of a trade name under chapter 47-25.

**SECTION 4. AMENDMENT.** Section 16.1-08.1-03.3 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-08.1-03.3. Campaign contributions by corporations, cooperative corporations, limited liability companies, and associations prohibited - Violation - Penalty - Political action committees authorized.**

1. A corporation, cooperative corporation, limited liability company, or association may not make a direct contribution:
  - a. To aid any political party, political committee, or organization.
  - b. To aid any corporation, limited liability company, or association organized or maintained for political purposes.
  - c. To aid any candidate for ~~political~~ public office or for nomination to ~~political~~ public office.
  - d. For any political purpose or the reimbursement or indemnification of any person for money or property so used.
  - e. For the influencing of any measure before the legislative assembly, except in accordance with chapter 54-05.1.
2. This section does not prohibit the establishment, administration, and solicitation of contributions to a separate and segregated fund to be utilized for political purposes by a corporation, cooperative corporation, limited liability company, or association. It is unlawful for:
  - a. The person or persons controlling the fund to make contributions or expenditures utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of them; or utilize money from dues, fees, treasury funds, or other money required as a condition of membership in an association, or as a condition of employment; or utilize money obtained in any commercial transaction. Moneys from fees, dues, treasury funds, or money obtained in a commercial transaction may, however, be used to pay costs of administration of the fund.
  - b. Any person soliciting an employee, stockholder, patron, or member for a contribution to the fund to fail to inform the employee or member of the political purposes of the fund at the time of the solicitation or of the general political philosophy intended to be advanced through committee activities.
  - c. Any person soliciting an employee or member for a contribution to the fund to fail to inform the employee or member at the time of the solicitation of the right to refuse to contribute without any reprisal.

- d. Any contribution to be accepted without keeping an accurate record of the contributor and amount contributed and of amounts expended for political purposes.
  - e. Any contribution to be accepted from any person who is not an employee, stockholder, patron, or member of the corporation, cooperative corporation, limited liability company, or association maintaining the political action committee.
  - f. Any expenditure, ~~except a contract, promise, or agreement, express or implied, to make any expenditure,~~ made for political purposes to be reported under this section before control of the expenditure has been released by the political action committee except if there is a contract, promise, or agreement, expressed or implied, to make such expenditure.
3. All political action committees, as described in section 16.1-08.1-01, formed for the purpose of administering the segregated fund provided for in this section shall file a statement showing the name and mailing address of each contributor of an amount in excess of two hundred dollars in the aggregate for the reporting period and a listing of all expenditures of an amount in excess of two hundred dollars in the aggregate made for political purposes with the secretary of state. The statement must include the amount of each reportable contribution and the date it was received and the amount of each reportable expenditure and the date it was made. A year-end statement covering the entire calendar year must be filed no later than the thirty-first day of January of the following year. A preelection statement must be filed no later than the twelfth day before any primary, special, or general election and must be complete from the beginning of the calendar year through the twentieth day before the election. Even if a political action committee has not received any contributions or made any expenditures in excess of two hundred dollars during the reporting period, the political action committee shall file a statement as required by this chapter. A statement filed according to this section during the reporting period must show the following:
- a. The gross total of all contributions received and expenditures made in excess of two hundred dollars;
  - b. The gross total of all contributions received and expenditures made of two hundred dollars, or less; and
  - c. The cash on hand in the filer's account at the start and close of the reporting period.
4. A political action committee shall report the occupation, employer, and principal place of business of each person, or the political committee if not already registered according to state or federal law, who contributed five thousand dollars or more in the aggregate during the reporting period.
5. A person may not make a payment of that person's money or of another person's money to any other person for a political purpose in any name other than that of the person who supplies the money and a person may not knowingly receive the payment nor enter nor cause the payment to

be entered in that person's account or record in any name other than that of the person by whom it actually was furnished.

6. If an officer, employee, agent, attorney, or other representative of a corporation, cooperative corporation, limited liability company, or association makes any contribution prohibited by this section out of corporate, cooperative corporation, limited liability company, or association funds or otherwise violates this section, it is prima facie evidence of a violation by the corporation, cooperative corporation, limited liability company, or association.
7. A violation of this section may be prosecuted in the county where the contribution is made or in any county in which it has been paid or distributed.
8. It is a class A misdemeanor for an officer, director, stockholder, manager, governor, member, attorney, agent, or representative of any corporation, cooperative corporation, limited liability company, or association to violate this section or to counsel or consent to any violation. Any person who solicits or knowingly receives any contribution in violation of this section is guilty of a class A misdemeanor.
9. Any officer, director, stockholder, manager, governor, member, attorney, agent, or representative who makes, counsels, or consents to the making of a contribution in violation of this section is liable to the company, corporation, limited liability company, or association for the amount so contributed.

**SECTION 5. AMENDMENT.** Subsections 1 and 4 of section 16.1-08.1-03.9 of the North Dakota Century Code are amended and reenacted as follows:

1. A judicial district candidate or a candidate committee for a judicial district candidate shall make and file a statement in accordance with this section. The candidate or candidate committee shall include in the statement:
  - a. The name and mailing address of all contributors who made contributions in excess of two hundred dollars in the aggregate for the purpose of influencing the nomination for election, or election, of the candidate;
  - b. The aggregated amount of the contributions from each listed contributor; ~~and~~
  - c. The date the last contribution was received from each listed contributor;
  - d. The gross total of all contributions received of two hundred dollars, or less; and
  - e. The cash on hand in the filer's account at the start and close of the reporting period.
4. A candidate or a candidate committee described in this section shall be required to file a year-end statement with the secretary of state ~~for any~~

year in which a contribution was received, regardless of whether the candidate sought election during that calendar year.

**SECTION 6. AMENDMENT.** Subsections 2, 3, 4, and 5 of section 16.1-08.1-03.11 of the North Dakota Century Code are amended and reenacted as follows:

2. A candidate or a candidate committee described in this section shall file a statement with the ~~county~~ city auditor no later than the twelfth day before the date of ~~the any~~ election in which the candidate's name appears on the ballot or in which the candidate seeks election through write-in votes. The reporting period for each of these statements is from the beginning of that calendar year through the twentieth day before the date of the election.
3. A candidate or a candidate committee described in this section shall also be required to file a complete year-end statement with the ~~county~~ city auditor no later than the thirty-first day of January in the year immediately following the date of the election in which the candidate's name appeared on the ballot or in which the candidate sought election through write-in votes. Even if the candidate or candidate committee has not received any contributions in excess of two hundred dollars during the reporting period, the candidate or candidate committee shall file a statement as required by this section.
4. A candidate or a candidate committee described in this section shall be required to file a year-end statement with the ~~county~~ city auditor for any year in which a contribution was received, regardless of whether the candidate sought election during that calendar year.
5. A statement required by this section to be filed with the ~~county~~ city auditor must be:
  - a. Deemed properly filed when deposited with or delivered to the ~~county~~ city auditor within the prescribed time. A statement that is mailed is deemed properly filed when it is postmarked and directed to the ~~county~~ city auditor within the prescribed time. If the ~~county~~ city auditor does not receive a statement, a duplicate of the statement must be promptly filed upon notice by the ~~county~~ city auditor of its nonreceipt.
  - b. Preserved by the ~~county~~ city auditor for a period of four years from the date of filing. The statement is to be considered a part of the public records of the ~~county~~ city auditor and must be open to public inspection.

**SECTION 7. AMENDMENT.** Section 16.1-08.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-08.1-05. Audit by secretary of state - Requested audits - Reports.**

1. If a substantial irregularity is evident or reasonably alleged, the secretary of state may arrange an audit of any statement filed pursuant to this chapter, to be performed by a certified public accountant of the filer's choice, subject to approval by the secretary of state. If an audit of a statement arranged by the secretary of state under this subsection

reveals a violation of this chapter, the candidate, political party, or political committee filing the statement shall pay a fine to the secretary of state equal to five percent of the aggregate of contributions and expenditures found to be in violation or an amount sufficient to pay the cost of the audit, whichever is greater. If an audit of a statement arranged by the secretary of state under this subsection does not reveal a violation of this chapter, the cost of the audit must be paid for by the secretary of state.

2. If a substantial irregularity is reasonably alleged, the secretary of state may arrange an audit of any statement filed pursuant to this chapter, performed by a certified public accountant of the filer's choice, subject to approval by the secretary of state, upon written request by any interested party made to the secretary of state within thirty days following receipt of a statement by the secretary of state. The request must be made in writing, recite a substantial irregularity and a lawful reason for requesting an audit, and be accompanied by a bond in an amount established by the secretary of state sufficient to pay the cost of the audit. If an audit of a statement arranged by the secretary of state under this subsection reveals a violation of this chapter, the candidate, political party, or political committee filing the statement shall pay a fine to the secretary of state equal to five percent of the aggregate of contributions and expenditures found to be in violation or an amount sufficient to pay the cost of the audit, whichever is greater, and the bond shall be returned to the person submitting it. If an audit of a statement arranged by the secretary of state under this subsection does not reveal a violation of this chapter, the cost of the audit must be satisfied from the bond filed with the secretary of state.

An audit may not be made or requested of a statement for the sole reason that it was not timely filed with the secretary of state. An audit made or arranged according to this section must audit only those items required to be included in any statement, registration, or report filed with the secretary of state according to this chapter. The secretary of state may collect any payment obligation arising out of this section by civil action or by assignment to a collection agency, with any costs of collection to be added to the amount owed and to be paid by the delinquent filer. Any remaining moneys collected by the secretary of state after an audit is paid for under this section must be deposited in the state's general fund. This section does not apply to statements filed according to ~~section 16.1-08.1-03.9~~ sections 16.1-08.1-03.10 and 16.1-08.1-03.11.

**SECTION 8. AMENDMENT.** Subsection 1 of section 16.1-08.1-06 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~Except for a statement required to be filed under section 16.1-08.1-03.9, any other~~ Any statement required by this chapter to be filed with the secretary of state must be:
  - a. Deemed properly filed when deposited with or delivered to the secretary of state within the prescribed time and in the format established by the secretary of state. A statement that is mailed is deemed properly filed when it is postmarked and directed to the secretary of state within the prescribed time. If the secretary of state does not receive a statement, a duplicate of the statement must be promptly filed upon notice by the secretary of state of its nonreceipt. After a statement has been filed, the secretary of state

may request or accept written clarification along with an amended statement from a candidate, political party, or political committee filing the statement when discrepancies, errors, or omissions on the statement are discovered by the secretary of state, the candidate, political party, or political committee filing the statement, or by any interested party reciting a lawful reason for requesting clarification and an amendment be made. When requesting an amended statement, the secretary of state shall establish a reasonable period of time, not to exceed ten days, agreed to by the candidate, political party, or political committee, for filing the amended statement with the secretary of state.

- b. Preserved by the secretary of state for a period of four years from the date of filing. The statement is to be considered a part of the public records of the secretary of state's office and must be open to public inspection.

Approved April 5, 2007  
Filed April 5, 2007

**CHAPTER 195****HOUSE BILL NO. 1243**

(Representatives Kasper, Dosch, R. Kelsch)  
(Senators Cook, Klein, Wardner)

**POLITICAL ADVERTISEMENT FALSE INFORMATION**

AN ACT to amend and reenact section 16.1-10-04 of the North Dakota Century Code, relating to publication of false information in political advertisements; and to provide a penalty.

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

<sup>118</sup> **SECTION 1. AMENDMENT.** Section 16.1-10-04 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-10-04. Publication of false information in political advertisements - Penalty.** No A person may be guilty of a class A misdemeanor if that person knowingly sponsors, or with reckless disregard for its truth or falsity, publishes any political advertisement or news release that contains any assertion, representation, or statement of fact, including information concerning a candidate's prior public record, which the sponsor knows to be untrue, deceptive, or misleading, whether on behalf of or in opposition to any candidate for public office, initiated measure, referred measure, constitutional amendment, or any other issue, question, or proposal on an election ballot, and whether such the publication is by radio, television, newspaper, pamphlet, folder, display cards, signs, posters, or billboard advertisements, electronic transmission, or by any other public means. Any person who violates the provisions of this section is guilty of a class A misdemeanor. This section does not apply to a newspaper, television or radio station, or other commercial medium that is not the source of the political advertisement or news release.

Approved April 18, 2007  
Filed April 19, 2007

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<sup>118</sup> Section 16.1-10-04 was also amended by section 1 of House Bill No. 1376, chapter 196.

**CHAPTER 196****HOUSE BILL NO. 1376**

(Representatives Grande, Brandenburg, Haas, Hatlestad)  
(Senator Dever)

**CORRUPT ELECTION PRACTICES**

AN ACT to amend and reenact sections 16.1-10-04 and 16.1-10-06.2 of the North Dakota Century Code, relating to corrupt election practices.

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

<sup>119</sup> **SECTION 1. AMENDMENT.** Section 16.1-10-04 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-10-04. Publication of false information in political advertisements - Penalty.** ~~Ne~~ A person may not knowingly sponsor any political advertisement or news release that contains any assertion, representation, or statement of fact, including information concerning a candidate's prior public record, which the sponsor knows to be untrue, deceptive, or misleading, whether on behalf of or in opposition to any candidate for public office, initiated measure, referred measure, constitutional amendment, or any other issue, question, or proposal on an election ballot, and whether such publication is by radio, television, newspaper, pamphlet, folder, display cards, signs, posters, ~~or~~ billboard advertisements, web sites, or by any other public means. Any person who violates the provisions of this section is guilty of a class A misdemeanor.

**SECTION 2. AMENDMENT.** Section 16.1-10-06.2 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-10-06.2. Sale or distribution at polling place.** ~~Ne~~ A person may not approach a person attempting to enter a polling place, or who is in a polling place, for the purpose of selling, soliciting for sale, advertising for sale, or distributing any merchandise, product, literature, or service. ~~This prohibition applies~~ A person may not approach a person attempting to enter a polling place, who is in a polling place, or who is leaving a polling place for the purpose of gathering signatures for any reason. These prohibitions apply in any polling place or within one hundred feet [30.48 meters] from any entrance leading into a polling place on election day.

Approved March 5, 2007  
Filed March 6, 2007

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<sup>119</sup> Section 16.1-10-04 was also amended by section 1 of House Bill No. 1243, chapter 195.



## CHAPTER 197

### SENATE BILL NO. 2234

(Senators Dever, Triplett)  
(Representatives L. Meier, Potter)

### PRIMARY ELECTIONS

AN ACT to amend and reenact subsections 1 and 2 of section 16.1-11-06, section 16.1-11-10, subsection 1 of section 16.1-11-11, subdivision a of subsection 2 of section 16.1-11-11, subdivision a of subsection 1 of section 16.1-11-16, subsection 1 of section 16.1-11-21, subsection 2 of section 16.1-11-26, and section 16.1-11-32 of the North Dakota Century Code, relating to primary elections; and to repeal section 16.1-11-07 of the North Dakota Century Code, relating to presidential preference contests.

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

**SECTION 1. AMENDMENT.** Subsections 1 and 2 of section 16.1-11-06 of the North Dakota Century Code are amended and reenacted as follows:

1. A certificate of endorsement signed by the state chairman of any legally recognized political party containing the candidate's name, post-office address, and telephone number, the title of the office to which the candidate aspires, and the party which the candidate represents; or
2. A petition containing the following:
  - a. The candidate's name, post-office address, and telephone number, and the title of the office to which the candidate aspires, the appropriate district judgeship number if applicable, and whether the petition is intended for nomination for an unexpired term of office if applicable.
  - b. The name of the party the candidate represents if the petition is for an office under party designation.
  - c. The signatures of qualified electors, the number of which must be determined as follows:
    - (1) If the office is under party designation, the signatures of three percent of the total vote cast for the candidates of the party with which the candidate affiliates for the same position at the last general election. However, no more than three hundred signatures may be required.
    - (2) If there was no candidate of a party for a position at the preceding general election, at least three hundred signatures.
    - (3) If the office is under the no-party designation, at least three hundred signatures.
  - d. The mailing address and the date of signing for each signer.

**SECTION 2. AMENDMENT.** Section 16.1-11-10 of the North Dakota Century Code is amended and reenacted 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, the secretary of state shall place the applicant's name upon the primary election ballot in the columns of the applicant's party as hereinafter provided. The affidavit must be substantially as follows:

State of North Dakota            )  
  ) ss.  
County of \_\_\_\_\_            )

I, \_\_\_\_\_, being sworn, 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 \_\_\_\_\_, \_\_\_\_\_, and I request that my name be printed upon the primary election ballot as provided by law, as a candidate of the \_\_\_\_\_ party for said office. I am requesting that my name be listed on the ballot as I have identified my ballot name below. I understand that nicknames are allowed as part of my ballot name, but titles and campaign slogans are not permissible. I have reviewed the requirements to hold office and I certify that I am qualified to serve if elected.

\_\_\_\_\_  
Ballot name requested

\_\_\_\_\_  
Candidate's signature

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
NOTARY SEAL                   My Commission Expires \_\_\_\_\_

<sup>120</sup> **SECTION 3. AMENDMENT.** Subsection 1 of section 16.1-11-11 of the North Dakota Century Code is amended and reenacted as follows:

1. A certificate of endorsement signed by the district chairman of any legally recognized political party containing the candidate's name, post-office address, and telephone number, the title of the office to which the candidate aspires, and the party that the candidate represents; or

<sup>121</sup> **SECTION 4. AMENDMENT.** Subdivision a of subsection 2 of section 16.1-11-11 of the North Dakota Century Code is amended and reenacted as follows:

<sup>120</sup> Section 16.1-11-11 was also amended by section 4 of Senate Bill No. 2234, chapter 197.

<sup>121</sup> Section 16.1-11-11 was also amended by section 3 of Senate Bill No. 2234, chapter 197.

- a. The candidate's name, post-office address, and telephone number, the title of the office to which the candidate aspires, the appropriate district number if applicable, and whether the petition is intended for nomination for an unexpired term of office if applicable.

**SECTION 5. AMENDMENT.** Subdivision a of subsection 1 of section 16.1-11-16 of the North Dakota Century Code is amended and reenacted as follows:

- a. The candidate's name, address, and telephone number and the title of the office to which the candidate aspires, including the appropriate district number if applicable, or whether the petition is intended for an unexpired term of office if applicable.

**SECTION 6. AMENDMENT.** Subsection 1 of section 16.1-11-21 of the North Dakota Century Code is amended and reenacted as follows:

1. A copy of the sample ballot of the primary election, as arranged by order and direction of the county auditor. The form of the sample ballot must conform in all respects to the form prescribed for the sample primary ballot by the secretary of state. The county auditor shall publish the sample ballot in all forms appropriate for the method or methods of voting in the county. Absent voters' ballots may not be considered in determining which form of voting is used. Candidates from each legislative district that falls within the boundaries of the county must be listed in a separate box or category within the sample ballot by legislative district number to enable the voters in each legislative district to ascertain the legislative candidates in their specific district. ~~Sample ballots used for publication purposes must be arranged using the rotation of the ballot in the precinct in the county which cast the highest total vote for governor at the last general election at which the office of governor was filled.~~

**SECTION 7. AMENDMENT.** Subsection 2 of section 16.1-11-26 of the North Dakota Century Code is amended and reenacted as follows:

2. Legislative:

state senator \_\_\_\_\_ district

~~member of house of representatives~~ state representative  
\_\_\_\_\_ district

**SECTION 8. AMENDMENT.** Section 16.1-11-32 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11-32. Poll lists kept by clerks of elections.** The clerks of primary elections shall keep ~~two lists~~ either one paper or one electronic list of the names of all persons voting at each primary election. ~~Each clerk shall return one~~ The clerks must return the list, which must be a part of the records and filed with other election returns. Only ~~two~~ one complete ~~lists~~ list of voters may be kept whether or not a special election is held simultaneously with the primary election.

**SECTION 9. REPEAL.** Section 16.1-11-07 of the North Dakota Century Code is repealed.

Approved April 4, 2007  
Filed April 5, 2007

## CHAPTER 198

### SENATE BILL NO. 2230

(Senators Oehlke, Dever)  
(Representative L. Meier)

### MAIL BALLOT ELECTIONS

AN ACT to amend and reenact sections 16.1-11.1-01, 16.1-11.1-02, 16.1-11.1-03, 16.1-11.1-04, and 16.1-11.1-06 of the North Dakota Century Code, relating to mail ballot elections.

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

**SECTION 1. AMENDMENT.** Section 16.1-11.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11.1-01. Counties may conduct mail ballot elections - Polling places - Records.** The board of county commissioners of a county may conduct a ~~primary~~ an election by mail ballot. The mail ballot election must include city elections administered by the county auditor and may include any other election administered by the county auditor pursuant to an agreement with the governing body of a political subdivision within the county. The board shall designate at least one polling place in the county to be open on the day of the election for voting in the usual manner. The county auditor shall place a notice at all polling places in the county used at the last statewide election which states the location of the polling places open for the ~~primary~~ election. The county auditor shall keep a record of each mail ballot provided to qualified electors and provide to the election board at each polling place open on the day of the election a list of every person who applied for a mail ballot.

**SECTION 2. AMENDMENT.** Section 16.1-11.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11.1-02. Application for mail ballots.** The county auditor shall mail an application form for a mail ballot to each person listed in the ~~pollbooks of central voter file for the county from the last regular statewide election~~ pollbooks of central voter file for the county on one date no sooner than the forty-fifth day before the election and no later than the thirtieth day before the election. The county auditor, for two consecutive weeks after the date on which the mail ballot applications are mailed, shall publish in the official newspaper of the county an application form for a mail ballot and a notice that additional mail ballot applications may be obtained from the election official. The application form for a mail ballot must be in substantially the following form:

I, \_\_\_\_\_, am or will be a qualified elector and to my best  
(please print name)

knowledge and belief am or will be entitled to vote at the ~~primary~~ election. I apply for an official mail ballot to be voted by me at that election. I understand that it is a criminal offense to knowingly vote when not qualified to do so.

I have or will have resided at the below address for at least thirty days before the election. My telephone number is \_\_\_\_\_.

Dated \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Signature of Applicant)

\_\_\_\_\_  
(Mailing Address)

\_\_\_\_\_, North Dakota \_\_\_\_\_  
(City) (Zip Code)

**SECTION 3. AMENDMENT.** Section 16.1-11.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11.1-03. Mail ballot distribution.** The county auditor shall mail an official mail ballot with a return identification envelope and instructions sufficient to describe the voting process to each qualified elector who returns a properly completed application form to the auditor by five p.m. on the fourth day before the election. The voting instructions must contain a statement informing the elector that the elector is entitled to complete the mail ballot in secrecy. The auditor shall mail the ballot by first-class mail, addressed to the address of the elector completing and returning a mail ballot application, and placed in an envelope that is prominently marked "Do Not Forward". The return identification envelope must contain the following form:

I, \_\_\_\_\_, under penalty of possible criminal prosecution for  
(please print name)

making a false statement, certify that I am or will be a qualified elector for the ~~primary~~ election and have not and will not vote more than one ballot in this election. I also understand that failure to complete the information below will invalidate my ballot.

\_\_\_\_\_  
(Signature of Voter)

\_\_\_\_\_  
(Mailing Address)

\_\_\_\_\_, North Dakota \_\_\_\_\_  
(City) (Zip Code)

**SECTION 4. AMENDMENT.** Section 16.1-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11.1-04. Voting by electors.** Upon receipt of a mail ballot, an elector shall mark it, sign the return identification envelope, and comply with the instructions provided with the ballot. The elector may return the completed ballot to the county auditor by mail or, before ~~six~~ five p.m. on the day ~~of~~ before the election, to any other place of deposit designated by the auditor. If the elector returns the ballot by mail, the elector shall provide the postage, and the ballot must be postmarked no later than the day before the election.

**SECTION 5. AMENDMENT.** Section 16.1-11.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11.1-06. Canvass of votes - Special election board.** The county auditor shall appoint a special election board for the purpose of counting mail ballots. The board may ~~not~~ begin ~~counting~~ scanning the ballots ~~until six p.m.~~ after the polls open on the day of the election but may not total the results until the closing time of the polls. A county conducting a mail ballot election constitutes one voting area, and ballots need not be sorted according to precinct or ward unless necessary for the administration of the election.

Approved March 5, 2007  
Filed March 6, 2007

**CHAPTER 199****HOUSE BILL NO. 1379**

(Representatives L. Meier, Grande, Haas)  
(Senators Dever, Krebsbach)

**WRITE-IN VOTE THRESHOLDS**

AN ACT to amend and reenact subdivision d of subsection 1 of section 16.1-12-02.2 of the North Dakota Century Code, relating to canvassing of write-in vote thresholds.

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

**SECTION 1. AMENDMENT.** Subdivision d of subsection 1 of section 16.1-12-02.2 of the North Dakota Century Code is amended and reenacted as follows:

- d. Name written or printed by the voter for an office that did not also include the darkening of the oval next to the write-in line, except that a write-in candidate for a nonfederal office may make a timely written demand to a county canvassing board to identify and preserve any write-in vote cast for the office sought by the write-in candidate for canvass by the board. The candidate shall deliver the demand to the county auditor and a copy to the ~~clerk of district court~~ county recorder no later than thirty-six hours before the time the county canvassing board is scheduled to meet. A demand only may be made if the unofficial election results maintained by the county auditor demonstrate that the write-in candidate's known vote total is within the pertinent percentage limits provided in subsection 1 or 2 of section 16.1-16-01 and a statement to that effect is included in the demand. After delivery of the ballots as provided by section 16.1-15-08, the canvassing board shall review the ballots to identify any ballot that contains a write-in vote. The county canvassing board shall tally and canvass any write-in vote in the same manner as lawful or qualifying write-in votes if the canvassing board is able to clearly ascertain the intent of the voter from examining the ballot because the write-in candidate's name has been written on the ballot opposite the office to be voted for or because of any other cogent evidence of intent.

Approved April 13, 2007  
Filed April 26, 2007



**CHAPTER 200****SENATE BILL NO. 2239**

(Senators J. Lee, Dever)  
(Representative Potter)

**GENERAL ELECTION ADMINISTRATION**

AN ACT to amend and reenact subsection 1 of section 16.1-13-17 and sections 16.1-13-22 and 16.1-13-27 of the North Dakota Century Code, relating to general election provisions.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 16.1-13-17 of the North Dakota Century Code is amended and reenacted as follows:

1. The name of each person nominated, that person's post-office address, phone number, the office for which that person is nominated, the legislative district number if applicable, and whether the certificate is intended for an unexpired term of office if applicable.

**SECTION 2. AMENDMENT.** Section 16.1-13-22 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-13-22. Delivering ballot to elector - Initialing.** The inspector or one of the election judges shall deliver ballots to the qualified electors. The inspector or judge delivering the paper ballot shall inform each elector that if the ballot is not ~~stamped and~~ initialed by an election official it will be invalidated and to protect the elector's right to vote the elector should verify that the ballot has been ~~stamped and~~ initialed. Before delivering any paper ballot to an elector, the inspector or judge shall initial the ballot. Failure to initial a paper ballot in the proper place does not invalidate the ballot, but a complete failure to initial a paper ballot does invalidate the ballot.

1. ~~At primary elections, the inspector or judge shall also inform each elector that if the elector splits the party ballot or votes for candidates of more than one party the elector's party ballot will be rejected.~~
2. ~~Before delivering any paper ballot to an elector, the inspector or judge shall initial the ballot. Failure to initial a paper ballot in the proper place does not invalidate the ballot, but a complete failure to initial a paper ballot does invalidate the ballot.~~

**SECTION 3. AMENDMENT.** Section 16.1-13-27 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-13-27. Disability of Assistance to elector - Polling place accessibility.** Any elector who declares to the judges of the election that the elector cannot read the English language, or that because of blindness or other disability is unable to mark the elector's ballot, upon request, may receive the assistance of any person of the elector's choice, other than the elector's employer, officer or agent of the elector's union, a candidate running in that election, or a relative of a candidate as provided in subsection 2 of section 16.1-05-02, in marking the elector's ballot. If the elector requests the assistance of a member of the election board, however, the elector shall receive the assistance of both election judges in the marking of the elector's ballot. No one assisting any elector in marking a ballot under this chapter may give information regarding the ballot. No elector, other than one who is unable to read the English language or one who because of disability is unable to mark a ballot requests assistance, may divulge to anyone within the polling place the name of any candidate for whom the elector intends to vote, nor ask, nor receive the assistance of any person within the polling place to mark the elector's ballot. Parking facilities at polling places must be accessible to the elderly and the physically disabled and must be clearly marked.

Approved May 4, 2007  
Filed May 4, 2007

**CHAPTER 201****SENATE BILL NO. 2231**

(Senators Oehlke, Dever)  
(Representative Potter)

**PRESIDENTIAL ELECTOR APPLICATIONS**

AN ACT to amend and reenact section 16.1-14-20 of the North Dakota Century Code, relating to presidential electors.

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

**SECTION 1. AMENDMENT.** Section 16.1-14-20 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-14-20. Application for presidential ballot by new residents.** A person desiring to qualify to vote for presidential electors is not required to register but, not less than ten days in advance of the election, shall make an application in the form of an affidavit executed in duplicate in the presence of the county auditor substantially as follows:

State of North Dakota            )  
  ) ss.  
County of \_\_\_\_\_            )

I, \_\_\_\_\_, do solemnly swear that:

1. I am a citizen of the United States.
2. Before becoming a resident of this state, I resided at \_\_\_\_\_ street, in the (town) (township) (city) of \_\_\_\_\_, county of \_\_\_\_\_ in the state of \_\_\_\_\_.
3. On the day of the next presidential election, I shall be at least eighteen years of age. I have been a resident of this state since \_\_\_\_\_, \_\_\_\_\_, now residing at \_\_\_\_\_ street, in the (town) (township) (city) of \_\_\_\_\_, county of \_\_\_\_\_ in the state of North Dakota.
4. I have resided in \_\_\_\_\_ precinct for less than thirty days. I believe I am entitled under the laws of this state to vote at the presidential election to be held on November \_\_\_\_\_, \_\_\_\_.
5. I apply for a presidential election ballot. I have not voted and will not vote otherwise than by this ballot at that election.

Signed \_\_\_\_\_  
(Applicant)

\_\_\_\_\_  
(Applicant's telephone number)

Subscribed and sworn to before me this \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_.

Signed \_\_\_\_\_  
(Title and name of officer  
authorized to administer oaths)

Approved March 7, 2007  
Filed March 8, 2007

## CHAPTER 202

### HOUSE BILL NO. 1377

(Representatives Grande, Haas, Heller, Kasper)  
(Senator Dever)

## CANVASSING ELECTIONS

AN ACT to amend and reenact sections 16.1-15-06 and 16.1-15-08, subsection 6 of section 16.1-15-09, and sections 16.1-15-13, 16.1-15-15, 16.1-15-19, 16.1-15-22, 16.1-15-25, and 16.1-15-26 of the North Dakota Century Code, relating to canvassing elections.

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

**SECTION 1. AMENDMENT.** Section 16.1-15-06 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-06. Reports and pollbooks sent to county auditor - Compensation for making returns.** Immediately following the canvass, except in cases of emergency or inclement weather, the inspector of elections, or one of the judges appointed by the inspector of elections, personally shall deliver one of the signed canvass reports provided for in section 16.1-15-04 to the county auditor. The reports, carefully sealed under cover, accompanied by ~~both of the pollbooks~~ pollbook provided for in sections 16.1-02-13 and 16.1-06-21 with the oaths of the inspector and poll clerks affixed thereto, must be delivered properly to the county auditor. The person making the return shall receive compensation therefor in accordance with section 16.1-05-05. The compensation and mileage must be paid out of the county treasury on a warrant of the county auditor and is full compensation for returning all used or voided ballots to the proper official.

**SECTION 2. AMENDMENT.** Section 16.1-15-08 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-08. Wrapping and returning of ballots to ~~clerk of the district court~~ county recorder.** After generating the reports and poll lists provided for in section 16.1-15-06 for delivery to the county auditor, the election board shall cause the ballots containing lawful write-in votes cast at the election to be placed in a suitable wrapper to form a complete wrapper for the ballots. All ballots without write-in votes shall be wrapped in a similar manner. The ballots and wrappers must then be tightly secured at the outer end to completely envelop and hold the ballots together. Ballots that are void must be secured in a separate wrapper and must be marked "void". Ballots that are spoiled must be separately secured and marked "spoiled". In sealing ballots, the various classes of ballots must be kept separate. Each wrapper must be endorsed with the names or numbers of the precincts and the date on which the election was held. The wrappers must be sealed securely in a manner prescribed by the ~~secretary of state~~ county auditor so the wrappers cannot be opened without an obvious and permanent breaking of the seal. The ballots, together with those found void or spoiled, and the opened envelopes from voted absentee ballots and the unopened envelopes of absentee ballots rejected as defective, must be returned in person to the ~~clerk of the district court~~ county recorder. At the meeting of the county canvassing board, the ~~clerk of the district court~~ county recorder shall deliver the ballots containing lawful write-in votes from all the precincts within the county. At the meeting of the county canvassing board, the ~~clerk of the~~

~~district court~~ county recorder shall deliver each ballot that may contain a write-in vote referenced in a demand made under subsection 1 of section 16.1-12-02.2. Ballots used with any electronic voting system or counted by an electronic counting machine must be sealed and returned as provided in this section.

**SECTION 3. AMENDMENT.** Subsection 6 of section 16.1-15-09 of the North Dakota Century Code is amended and reenacted as follows:

6. If any electronic voting system ballot or a ballot counted by an electronic counting machine is damaged or defective so that it cannot be properly counted by the automatic tabulating or electronic counting equipment, a true duplicate copy must be made by election officials of opposed interests and substituted for the damaged or defective ballot. All duplicate ballots must be clearly labeled duplicate, must bear a serial number that must be recorded on the damaged or defective ballot, and must be wrapped and delivered with other ballots to the ~~district judge or to the clerk of district court~~ county recorder.

**SECTION 4. AMENDMENT.** Section 16.1-15-13 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-13. District judge or clerk of district court County recorder to keep ballots - Exception - Use of ballots as evidence.** Immediately upon receiving the ballots as provided in section 16.1-15-08, the ~~district judge or the clerk of district court~~ county recorder shall give a receipt to the election judges and shall place the ballots properly arranged in the order of the precinct number in boxes that shall be securely locked. The boxes must be placed in a fireproof vault and must be kept securely for forty-five days if the ballots do not contain federal offices and twenty-two months if the ballots contain federal offices. With the exception of the ballots containing lawful write-in votes that may be counted at the meeting of the county canvassing board, the ballots may not be opened nor inspected, except upon court order in a contested election, when it is necessary to produce them at a trial for any offense committed at an election, or to permit election officials to complete their duties. Either forty-five days or twenty-two months after the election dependent upon the retention schedule outlined in this section, upon determination by the ~~district judge or the clerk of district court~~ county recorder that no contest is pending, the ballots must be destroyed. If any contest of the election of any officer voted for at the election or a prosecution under the provisions of this title is pending at the expiration of such time, the ballots may not be destroyed until the contest or prosecution is finally determined. The ballots returned to the ~~district judge or clerk of district court~~ county recorder as provided in this section must be received in evidence without introducing further foundation.

**SECTION 5. AMENDMENT.** Section 16.1-15-15 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-15. County canvassing board - Composition.** The county canvassing board must be composed of the ~~clerk of the district court~~ county recorder, county auditor, chairman of the board of county commissioners, and a representative of 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. The district chairmen of the political parties from each legislative district within the county shall appoint the respective political party representative. The county canvassing board must be comprised of at least five members, and both political parties must be represented. Each political party from each legislative district within a county may request representation on the canvassing board if there is equal representation from

each of the political parties. 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 recorder, 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.

**SECTION 6. AMENDMENT.** Section 16.1-15-19 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-19. County canvassing board to disregard technicalities, misspelling, and abbreviations - Write-in votes canvassed - Votes from unestablished precincts disregarded.** In canvassing the election returns, the county canvassing board shall disregard technicalities, misspelling, and the use of initial letters or abbreviations of the name of any candidate for office if it can be ascertained for whom the vote was intended. Pursuant to section 16.1-12-02.2, the board shall canvass all qualifying write-in votes. The board may not count votes polled in any place except at established precincts. The county canvassing board is authorized to initial all absentee ballots cast pursuant to section 16.1-07-09 that were not considered or counted ~~or by election boards and to make a final determination of eligibility for all ballots which~~ were rejected at the various precincts in the county for the reasons provided in sections 16.1-07-11 and 16.1-07-12.

**SECTION 7. AMENDMENT.** Section 16.1-15-22 of the North Dakota Century Code is amended and reenacted 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 the auditor's official seal, shall return~~ provide to the secretary of state ~~by registered or certified mail within 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 the auditor's county and the votes cast for every candidate for nomination according to reporting instructions specified by the secretary of state. The abstract must also include the total number of votes cast for initiated or referred measures and constitutional amendments. The certified abstract ~~to be mailed under this section~~ must be in the possession of the secretary of state before four p.m. on the tenth day after the primary election.

**SECTION 8. AMENDMENT.** Section 16.1-15-25 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-25. County auditor to forward abstract of votes of general election to secretary of state - Contents - Abstract for presidential electors.** Within ten days and before four p.m. on the tenth day following any general election, the county auditor of each county, ~~under official seal, shall return~~ provide to the secretary of state a certified abstract of the votes cast in the county at the election according to the reporting instructions specified by the secretary of state. ~~All certified abstract of votes must be transmitted by registered or certified mail to the secretary of state.~~

**SECTION 9. AMENDMENT.** Section 16.1-15-26 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-26. Memorandum of date of receiving returns in secretary of state's office.** A memorandum of the date of reception of all returns of votes in the secretary of state's office must be made ~~on the envelope containing the returns to~~ each county auditor.

Approved March 5, 2007  
Filed March 6, 2007



## CHAPTER 203

### HOUSE BILL NO. 1374

(Representatives Boehning, Haas, Headland)  
(Senator Dever)

### ELECTION RECOUNTS

AN ACT to amend and reenact sections 16.1-16-01 and 16.1-16-07 of the North Dakota Century Code, relating to election recounts.

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

**SECTION 1. AMENDMENT.** Section 16.1-16-01 of the North Dakota Century Code is amended and reenacted 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, county, or city office, or for the approval or disapproval of any measure, question, or bond issue submitted to the qualified electors of this state or one of its political subdivisions must be conducted according to guidelines established by the secretary of state and as follows:

1. A recount must be conducted when:
  - a. Any person failed to be nominated in a primary election by one percent or less of the highest vote cast for a candidate for the office sought.
  - b. Any person failed to be elected in a general or special election by one-half of one percent or less of the highest vote cast for a candidate for that office.
  - c. A question, measure, or bond issue submitted to the qualified electors has been decided by a margin not exceeding one-fourth of one percent of the total vote cast for and against the question at any election.
2. A demand for a recount may be made by any of the following:
  - a. Any person who failed to be nominated in a primary election by more than one percent and less than two percent of the highest vote cast for a candidate for the office sought.
  - b. Any person who failed to be elected in a general or special election by more than one-half of one percent and less than two percent of the highest vote cast for a candidate for that office.
3. A demand for a recount must be made within three days after the canvass of the votes by the county canvassing board in the case of county elections and city elections that are combined with the county and by the state canvassing board in the case of congressional, state, district, or legislative elections. The demand must be in writing, must recite one of the conditions in subsection 2 as a basis for the recount,

must contain a bond in an amount previously established by the auditor or auditors doing the recount sufficient to pay the cost of the recount, and must be filed with:

- a. The secretary of state when the recount is for a congressional, state, district, or legislative office.
  - b. The county auditor when the recount is for a county office or city office when a city election is combined with the county.
4. Within four days after the canvass of the votes by the state canvassing board in the case of congressional, state, district, or legislative elections, the secretary of state shall notify all the county auditors to conduct recounts as required by subsection 1 and, when a timely recount demand is received and it is in proper form, as required by subsection 2. The secretary of state shall fix the date or dates of the recounts of legislative contests to be held within seven days after giving notice to the affected auditors that recounts must be conducted. The secretary of state shall fix the date or dates of the recounts of statewide races to be held within fourteen days after giving notice to the auditors that recounts must be conducted. Within four days after the canvass of votes by the county canvassing board or other political subdivision canvassing board, the county auditor or other political subdivision election official shall fix the date for recounts limited to the county, those cities within the county which combined the election with the county, or other political subdivision. The date must be within eight days after the canvass. In all recount proceedings, the county auditor or other election official, as appropriate, shall send notice of the date, place, and time of the recount to all candidates and petitioners involved by certified mail.
5. Recount employees. For recounts conducted by counties of federal, state, district, and county offices, measures, and questions, the county auditor must conduct the recount and may employ up to four qualified electors of the county to assist in the recount. The county auditor shall review all paper and electronic voting system ballots and associated records, whether the ballots were counted at the precinct or the county canvass, and all absentee ballots cast pursuant to section 16.1-07-09 to determine which ballots were cast and counted according to the law, including that the ballots were properly initialed and that the initials found on the ballots are verified as those of the precinct election board members. The county auditor shall check the precinct count and the count of the county canvassing board. If the county auditor is a candidate involved in the recount, the county auditor is disqualified from acting thereon, and the ~~clerk of the district court of the county~~ recorder shall perform the duties required of the county auditor by this section. For recounts conducted by political subdivisions other than counties of local offices, measures, and questions, the election officer in a political subdivision shall administer a recount in the same manner as is required under this subsection for counties with respect to political subdivision ballot measures, questions, or bond issues.
6. Recount participants. The persons entitled to participate at the recount are:
- a. Each candidate involved in the recount, either personally or by a representative.

- b. 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 or other political subdivision election official shall count the challenged ballot as the auditor or election official deems proper and shall then set the ballot aside with a notation that it was challenged and how it was counted.

7. Recount board. At the conclusion of the recount, the county auditor or other election official shall submit all challenged ballots to the recount board for decision. Except for political subdivision recounts other than counties, the recount board must 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~~ recorder. Unless otherwise specified by law, for a political subdivision other than a county, the governing body of the political subdivision shall appoint the recount board. No person may serve on the recount board if the person ~~would not be qualified to serve on the election board pursuant to subsection 2 of section 16.1-05-02~~ has anything of value bet or wagered on the result of the election, is a candidate for the office being recounted, or is the husband, wife, father, mother, father-in-law, mother-in-law, son, daughter, son-in-law, daughter-in-law, brother, or sister, whether by birth or marriage, of the whole or the half-blood, of any candidate involved in the recount. If any of the members of the recount board are disqualified or cannot serve for any other reason, the members of the board of county commissioners or other political subdivision governing body who would be qualified to serve on the board shall appoint disinterested qualified electors of the county or other political subdivision to serve as alternates. The recount board shall review all challenged ballots and on majority vote shall decide how those ballots are counted. The recount board is authorized to ~~stamp and~~ initial all absentee ballots cast pursuant to section 16.1-07-09 that were not considered or counted ~~or were rejected~~ at the various precincts in the county for the reasons provided in sections 16.1-07-11 and 16.1-07-12 or by the county canvassing boards as provided in section 16.1-15-19. 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 or other political subdivision election official shall take appropriate steps to safeguard the ballots.

7. 8. The county auditor or other election official shall certify the results of the recount no later than three days after the recount. The recount result is the official result of the election in the county or other political subdivision. The county auditor or other election official shall prepare a corrected abstract of the votes. In a recount limited to the county, city, or other political subdivision, if the corrected abstract shows no change in the outcome of the election, no further action may be taken. If the corrected abstract changes the outcome of the election, the county auditor or other election official shall issue certificates of nomination or election accordingly and shall certify the new result of a question submitted to the qualified electors. In the case of a city election that is combined with a county election, the county auditor shall certify the new

results of the election to the city auditor who is responsible for issuing new certificates of election if applicable.

- 8- 9. In congressional, statewide, district, or legislative recounts, the county auditor shall, no later than 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 qualified electors accordingly.
- 9- 10. The expenses incurred in a recount of a county election must be paid by the county on a warrant by the county auditor. The expenses incurred in a recount of a political subdivision other than a county election must be paid by that political subdivision. The expenses incurred in a recount of a city election must be paid by the city on a warrant by the city auditor. The expenses incurred in a recount of a congressional, state, or legislative election must 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. The expenses incurred in a recount demanded under subsection 2 of section 16.1-16-01 must be paid by the secretary of state or county auditor from the bond submitted by the person requesting the recount.
- 40- 11. This section also applies to city elections that are not combined with the county except the city auditor, to the extent applicable, shall perform the duties of the county auditor.

**SECTION 2. AMENDMENT.** Section 16.1-16-07 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-16-07. Contest involving irregularity of ballots - Preservation of ballots.** Either the contestant or the contestee, within the time provided by this title for the preservation of ballots, may give notice by certified mail to the ~~district judge or to the clerk of district court~~ county recorder of any county where the contestant or the contestee desires the ballots preserved, that an election contest is pending in a designated court. Thereupon, it is the duty of the ~~district judge or the clerk of district court~~ county recorder to preserve all the paper ballots and electronic voting system ballots and associated records until the contest has been finally determined.

Approved March 5, 2007  
Filed March 6, 2007

# ENERGY

## CHAPTER 204

### HOUSE BILL NO. 1462

(Representatives Porter, Damschen, Keiser)  
(Senators Lyson, Tollefson, Wardner)

## ENERGY POLICY AND INITIATIVE

AN ACT to provide a sales and use tax exemption for materials used in the compression, processing, gathering, and refining of gas and materials used in the construction or expansion of a refinery; to create and enact section 17-01-01 of the North Dakota Century Code, relating to a comprehensive energy policy for the state and the 25x'25 initiative; to amend and reenact section 54-35-18 of the North Dakota Century Code, relating to the electric industry competition committee; to authorize the legislative council to make certain statutory revisions; to provide for a department of commerce study; and to provide for a report to the legislative council.

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

**SECTION 1.** Section 17-01-01 of the North Dakota Century Code is created and enacted as follows:

**17-01-01. 25x'25 initiative.** The legislative assembly adopts the 25x'25 initiative with the goal that not later than January 1, 2025, the agricultural, forestry, and working land of the United States should provide from renewable resources not less than twenty-five percent of the total energy consumed in the United States and continue to produce safe, abundant, and affordable food, feed, and fiber. Increasing America's renewable energy use will bring new technologies to market and save consumers money, reduce the nation's dependence on oil from the Middle East, create good new jobs in rural America, and clean up the air and reduce urban smog and address global warming issues. As used in this initiative, renewable energy includes biofuels, solar, wind, hydropower, geothermal, carbon recycling, carbon sequestration, use of waste heat, recycling, low-emission technologies that create or use hydrogen, and energy efficiency initiatives. The 25x'25 initiative will benefit agriculture and forestry, the environment, and national security and provide economic growth.

**SECTION 2. Sales and use tax exemption for materials used in compressing, processing, gathering, or refining of gas.**

1. Gross receipts from sales of tangible personal property used in compressing, processing, gathering, or refining of gas recovered from a gas well in this state or used to expand or build a gas-processing facility in this state are exempt from taxes under chapter 57-39.2.
2. The owner of the tangible personal property must apply to the tax commissioner for a refund of sales and use taxes paid by any contractor, subcontractor, or builder for which the sales or use is

claimed as exempt under this section. Application for a refund must be made at the times and in the manner directed by the tax commissioner and must include sufficient information to permit the tax commissioner to verify the sales and use taxes paid and the exempt status of the sale or use.

3. All of the provisions of chapter 57-39.2 and 57-40.2 apply to the exemption under this section.

**SECTION 3. Sales and use tax exemption for materials used in construction or expansion of an oil refinery.**

1. Gross receipts from sales of tangible personal property used in expanding or constructing an oil refinery that has a nameplate capacity of processing at least five thousand barrels of oil per day in this state are exempt from taxes under chapter 57-39.2.
2. The owner of the tangible personal property must apply to the tax commissioner for a refund of sales and use taxes paid by any contractor, subcontractor, or builder for which the sales or use is claimed as exempt under this section. Application for a refund must be made at the times and in the manner directed by the tax commissioner and must include sufficient information to permit the tax commissioner to verify the sales and use taxes paid and the exempt status of the sale or use.
3. Chapters 57-39.2 and 57-40.2 apply to the exemption under this section.

<sup>122</sup> **SECTION 4. AMENDMENT.** Section 54-35-18 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-18. (Effective through August 1, 2007 2011) Electric industry competition - Need for study Energy development and transmission committee.** The legislative council shall study the impact of competition on the generation, transmission, and distribution of electric energy within this state. The legislative assembly finds that the economy of this state depends on the availability of reliable, low-cost electric energy. There is a national trend toward competition in the generation, transmission, and distribution of electric energy and the legislative assembly acknowledges that this competition has both potential benefits and adverse impacts on this state's electric suppliers as well as on their shareholders and customers and the citizens of this state. The legislative assembly determines that it is in the best interests of the citizens of this state to study the effects of competition on the generation, transmission, and distribution of electric energy. The legislative council, during each biennium, shall appoint an energy development and transmission committee in the same manner as the council appoints other interim committees. The council shall appoint six members of the house of representatives, four of whom must be from the majority political party and two of whom must be from the minority political party, and six members of the senate, four of whom must be from the majority political party and two of whom must be from the minority political

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<sup>122</sup> Section 54-35-18 was also amended by section 1 of House Bill No. 1028, chapter 468.

party. The chairman of the legislative council shall designate the chairman of the committee. The committee shall operate according to the statutes and procedure governing the operation of other legislative council interim committees. The committee shall study the impact of a comprehensive energy policy for the state and the development of each facet of the energy industry, from the obtaining of the raw natural resource to the sale of the final product in this state, other states, and other countries. The study may include the review of and recommendations relating to policy affecting extraction, generation, processing, transmission, transportation, marketing, distribution, and use of energy, and the taxation of shallow gas to reduce energy costs for all North Dakota residents.

**SECTION 5. LEGISLATIVE COUNCIL TO REDESIGNATE SECTIONS.** The legislative council shall redesignate sections 4-14.1-07.1, 4-14.1-07.2, 4-14.1-08, 4-14.1-09, and 4-14.1-10, chapter 6-09.17, sections 9-01-22, 47-05-14, 47-05-15, 47-05-16, and 47-16-42, and chapter 49-24 as appropriate chapters and sections of title 17. The legislative council may insert appropriate references in the sections of law listed in this section, consistent with usages contained in this Act. References inserted may be adjusted to suit the context and grammar of the sections and must be inserted so as to harmonize existing law with regard to the redesignation of sections provided by this Act. The legislative council may insert appropriate references to any measure enacted by the sixtieth legislative assembly which relates to the biodiesel partnership in assisting community expansion program, ethanol, biofuels, biomass, solar energy, wind energy, hydropower, geothermal, energy efficiency, the transmission authority, and a pipeline authority. References inserted may be adjusted to suit context and grammar of the sections and must be inserted so as to harmonize the legislative measure with regard to the creation of title 17 as provided by this Act.

**SECTION 6. NORTH DAKOTA ENERGY INDEPENDENCE INITIATIVE - REPORT TO LEGISLATIVE COUNCIL.** During the 2007-08 interim, the department of commerce shall convene an energy policy commission for the purpose of developing a comprehensive energy policy for the state that addresses:

1. The policy of this state to stimulate the development of renewable and traditional fossil-based energy within the state with the goal of providing secure, diverse, sustainable, and competitive energy supplies that can be produced and secured within the state to assist the nation in reducing its dependence on foreign energy sources.
2. The policy of this state to promote the development of new technologies, provide innovative opportunities, create additional employment and wealth that contributes to economic development, and decrease dependence on foreign energy supplies.
3. Growth of the fossil fuel and renewable energy industries within this state to encourage the state's competitiveness for both the domestic and export markets.
4. The assistance the state provides in research, development, and marketing of North Dakota-produced energy sources, including biodiesel, biomass, coal, ethanol, geothermal, hydroelectric, hydrogen, natural gas, oil, solar, and wind.
5. The need to:

- a. Expand the use of existing energy resources such as coal, oil, gas, wind, and hydropower by supporting continued research and development of technologies designed to enhance the use of traditional fuels.
- b. Examine ways to diversify the state's energy resource base by encouraging the growth of renewable sources such as wind, biomass, geological, solar, and water.
- c. Evaluate existing tax credits and incentives for all energy resources.
- d. Modernize and expand the state's energy infrastructure to ensure that energy supplies can be safely, reliably, and affordably transported to homes and businesses.
- e. Examine potential innovations that will be necessary to improve environmental conditions through the use of new technologies designed to encourage the continued use of fossil fuel as well as renewable resources.
- f. Review energy industry workforce and training needs and educational opportunities to enhance the future productivity of the energy industry.
- g. Develop a strategy to maximize the state's market opportunities in regional and global markets.

The energy policy commission consists of the commissioner of commerce, a representative of the agriculture community appointed by the governor, a representative recommended by the lignite energy council and appointed by the governor, a representative recommended by the North Dakota petroleum council and appointed by the governor, a member from the biodiesel industry appointed by the governor, a member from the biomass industry appointed by the governor, a member from the wind industry appointed by the governor, a member from the ethanol industry appointed by the governor, a representative recommended by the North Dakota petroleum marketers association and appointed by the governor, a member from the North Dakota investor-owned electric utility industry and appointed by the governor, a member from the generation and transmission electric cooperative industry and appointed by the governor, a member from the lignite coal-producing industry and appointed by the governor, and a member from the refining or gas-processing industry appointed by the governor. The commissioner of commerce is chairman of the energy policy commission. The commission shall meet at least six times or as often as the members deem necessary to complete the development of the comprehensive energy policy. The commission shall hold at least two public hearings before June 1, 2008, at which time interested parties may present testimony regarding issues pertinent to the development of the policy. The energy policy commission shall report to the legislative council during the 2007-08 interim on the progress of and results from the North Dakota energy independence initiative.

Approved April 27, 2007

Filed April 30, 2007



# FIRES

## CHAPTER 205

### HOUSE BILL NO. 1067

(Political Subdivisions Committee)

(At the request of the State Board of Higher Education)

### STATE FORESTER ASSISTANCE

AN ACT to amend and reenact section 18-02-07 of the North Dakota Century Code, relating to cooperation of the state forester and other agencies on fire and forest protection.

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

**SECTION 1. AMENDMENT.** Section 18-02-07 of the North Dakota Century Code is amended and reenacted as follows:

**18-02-07. Cooperation of state forester and other agencies - Fire and forest protection.** The state forester may cooperate and contract jointly or severally with departments and agencies of this or other states, with federal agencies, with counties, townships, or other political subdivisions, including rural fire protection districts, rural fire departments, municipal, and other corporations and associations, or with individuals, in the best interests of the people and the state in forest surveys, research in forestry, forest protection, including assisting fire departments in protection of forests and other resources and in assisting landowners to secure adoption of better forestry practices. The state forester may:

1. Cooperate and contract with the United States or any appropriate agency thereof to receive and use federal aid and matching funds which the state and its subdivisions may become eligible to receive.
2. Apply for, receive, and expend federal grants-in-aid and matching funds for fire protection services and generally aid rural fire departments and rural fire protection districts with all activities customary in the prevention and suppression of forest, brush, and grassland fires.
3. Purchase or otherwise acquire fire protection equipment to ~~loan~~ lend, transfer, or sell to rural fire departments and rural fire protection districts.

Approved March 23, 2007

Filed March 23, 2007

**CHAPTER 206****SENATE BILL NO. 2183**  
(Senators Klein, Dever, Erbele, Flakoll)  
(Representatives Damschen, Haas)**FIREFIGHTER'S DEATH BENEFITS**

AN ACT to create and enact chapter 18-05.1 of the North Dakota Century Code, relating to establishing a firefighters death benefit fund; to amend and reenact subsection 1 of section 26.1-03-17 of the North Dakota Century Code, relating to establishing a firefighters death benefit fund; and to provide a continuing appropriation.

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

**SECTION 1.** Chapter 18-05.1 of the North Dakota Century Code is created and enacted as follows:

**18-05.1-01. Firefighters death benefit fund.** The firefighters death benefit fund is a special fund in the state treasury. The revenue provided in section 26.1-03-17 must be deposited in the fund and is appropriated on a continuing basis to the insurance commissioner for disbursement as provided in this chapter. The insurance commissioner shall administer the fund.

**18-05.1-02. Payments from firefighters death benefit fund.** The governing body of a municipality having a paid fire department or the governing body of a city or rural fire protection district having no paid fire department may request that the insurance commissioner pay ten thousand dollars from the firefighters death benefit fund to the estate of a firefighter who dies from an injury sustained while responding to, during, or within forty-eight hours after a fire emergency or training activity. The insurance commissioner shall pay ten thousand dollars to the deceased firefighter's estate upon receipt of the request for payment and upon receipt of evidence that the death occurred from an injury sustained while responding to, during, or within forty-eight hours after a fire emergency.

**18-05.1-03. Definition.** For purposes of this chapter, firefighter means an individual who is a member of a paid or volunteer fire department that is a part of or is administered by this state, any political subdivision of this state, or a rural fire protection district.

<sup>123</sup> **SECTION 2. AMENDMENT.** Subsection 1 of section 26.1-03-17 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>123</sup> Section 26.1-03-17 was also amended by section 3 of House Bill No. 1296, chapter 250.

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 fraternal benefit and benevolent societies, doing business in this state, a tax on the gross amount of premiums, assessments, membership fees, subscriber fees, policy fees, service fees collected by any third-party administrator providing administrative services to a group that is self-insured for health care benefits, and finance and service charges received in this state during the preceding calendar year, at the rate of two percent with respect to life insurance, one and three-fourths percent with respect to accident and health insurance, and one and three-fourths 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 March first following the year for which the tax is assessable. Collections from this tax, except for collections deposited in the firefighters death benefit fund, must be deposited in the insurance tax distribution fund under section 18-04-04.1 but not in an amount exceeding one-half of the biennial amount appropriated for distribution under section 18-04-05 in any fiscal year. Collections from this tax in an amount of up to fifty thousand dollars per biennium, as may be necessary, are appropriated on a continuing basis for deposit in the firefighters death benefit fund for distribution under chapter 18-05.1. Collections from this tax exceeding the sum of the amount deposited in the insurance tax distribution fund and the amount deposited in the firefighters death benefit fund each fiscal year must be deposited in the general fund in the state treasury. If the due date falls on a Saturday or legal holiday, the tax is payable on the next succeeding business day.

Approved April 5, 2007  
Filed April 5, 2007

# FOODS, DRUGS, OILS, AND COMPOUNDS

## CHAPTER 207

### SENATE BILL NO. 2319

(Senators Grindberg, Lyson, Nelson)  
(Representatives DeKrey, Delmore, Thoreson)

## SCHEDULED LISTED CHEMICAL PRODUCTS DEFINITIONS AND SALE

AN ACT to amend and reenact sections 19-03.1-01 and 19-03.4-08 of the North Dakota Century Code, relating to definitions and the sale of scheduled listed chemical products; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 19-03.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.1-01. Definitions.** As used in this chapter and in chapters 19-03.2 and 19-03.4, unless the context otherwise requires:

1. "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:
  - a. A practitioner or, in the practitioner's presence, by the practitioner's authorized agent; or
  - b. The patient or research subject at the direction and in the presence of the practitioner.
2. "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.
3. "Anabolic steroids" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids.
4. "Board" means the state board of pharmacy.
5. "Bureau" means the drug enforcement administration in the United States department of justice or its successor agency.
6. "Controlled substance" means a drug, substance, or immediate precursor in schedules I through V as set out in this chapter.

7. "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.
8. "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance whether or not there is an agency relationship.
9. "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.
10. "Dispenser" means a practitioner who dispenses.
11. "Distribute" means to deliver other than by administering or dispensing a controlled substance.
12. "Distributor" means a person who distributes.
13. "Drug" means:
  - a. Substances recognized as drugs in the official United States pharmacopeia, national formulary, or the official homeopathic pharmacopeia of the United States, or any supplement to any of them;
  - b. Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals;
  - c. Substances, other than food, intended to affect the structure or any function of the body of individuals or animals; and
  - d. Substances intended for use as a component of any article specified in subdivision a, b, or c. The term does not include devices or their components, parts, or accessories.
14. "Hashish" means the resin extracted from any part of the plant cannabis with or without its adhering plant parts, whether growing or not, and every compound, manufacture, salt, derivative, mixture, or preparation of the resin.
15. "Immediate precursor" means a substance:
  - a. That the board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use in the manufacture of a controlled substance;
  - b. That is an immediate chemical intermediary used or likely to be used in the manufacture of the controlled substance; and
  - c. The control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

16. "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation or compounding of a controlled substance by an individual for the individual's own use or the preparation, compounding, packaging, or labeling of a controlled substance:
- By a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or
  - By a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.
17. "Marijuana" means all parts of the plant cannabis whether growing or not; the seeds thereof; the resinous product of the combustion of the plant cannabis; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
18. ~~"Methamphetamine precursor drug" means a drug or product containing ephedrine, pseudoephedrine, or any of their salts, optical isomers, or salts of optical isomers.~~
19. "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
- Opium and opiate and any salt, compound, derivative, or preparation of opium or opiate.
  - 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.
  - Opium poppy and poppy straw.
  - Coca leaves and any salt, compound, derivative, or preparation of coca leaves, any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

- ~~20.~~ 19. "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term does not include, unless specifically designated as controlled under section 19-03.1-02, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes its racemic and levorotatory forms.
- ~~24.~~ 20. "Opium poppy" means the plant of the species *papaver somniferum* L., except its seeds.
- ~~22.~~ 21. "Over-the-counter sale" means a retail sale of a drug or product other than a controlled, or imitation controlled, substance.
- ~~23.~~ 22. "Person" means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.
- ~~24.~~ 23. "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.
- ~~25.~~ 24. "Practitioner" means:
- A physician, dentist, veterinarian, pharmacist, scientific investigator, or other person licensed, registered, or otherwise permitted by the jurisdiction in which the individual is practicing to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research.
  - A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.
- ~~26.~~ 25. "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.
- ~~27.~~ 26. "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by a person, whether as principal, proprietor, agent, servant, or employee.
27. "Scheduled listed chemical product" means a product that contains ephedrine, pseudoephedrin, or phenylpropanolamine, or each of the salts, optical isomers, and salts of optical isomers of each chemical, and that may be marketed or distributed in the United States under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] as a nonprescription drug unless prescribed by a licensed physician.
28. "State" when applied to a part of the United States includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.
29. "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the

individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

**SECTION 2. AMENDMENT.** Section 19-03.4-08 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.4-08. (Effective through July 31, 2007) Retail or over-the-counter sale of methamphetamine precursor drugs scheduled listed chemical products - Penalty.**

1. The retail sale of methamphetamine precursor drugs scheduled listed chemical products is limited to:
  - a. Sales in packages containing not more than a total of two grams of one or more methamphetamine precursor drugs scheduled listed chemical products, calculated in terms of ephedrine HCl and base, pseudoephedrine HCl base, and phenylpropanolamine base; and
  - b. Sales in blister packs, each blister containing not more than two dosage units, or when the use of blister packs is technically infeasible, sales in unit dose packets or pouches.
2. A person may not ~~deliver~~:
  - a. Deliver in a single over-the-counter sale more than two packages of a methamphetamine precursor drug scheduled listed chemical product or a combination of methamphetamine precursor drugs scheduled listed chemical products; or
  - b. Without regard to the number of over-the-counter sales, deliver more than a daily amount of three and six-tenths grams of scheduled listed chemical products, calculated in terms of ephedrine base, pseudoephedrine base, and phenylpropanolamine base, to a purchaser.
3. When offering scheduled listed chemical products for sale, the person shall place the products behind a counter or other barrier, or in a locked cabinet, where purchasers do not have direct access to the products before the sale is made.
- ~~3.~~ 4. a. When offering a methamphetamine precursor drug scheduled listed chemical products for retail sale, a person shall require, obtain, and make a written record of the identification of the person purchasing the methamphetamine precursor drug scheduled listed chemical product, the identification being a document issued by a government agency as described in subdivisions a and b of subsection ~~5~~ 6, and shall ~~do at least one of the following~~:
  - (1) ~~Maintain continuous recorded video surveillance of the portion of the premises where the methamphetamine precursor drug is displayed for sale and place signs or placards giving notice to the public of the surveillance;~~
  - (2) ~~Place the methamphetamine precursor drug behind a counter or other barrier accessible only to the person making the sale of the drug; or~~



- ~~(3)~~ Display only one package of any brand or type of a methamphetamine precursor drug for purchase in an area accessible to the public deliver the product directly into the custody of the purchaser.
- b. The person shall maintain a written list of sales that identifies the product by name, the quantity sold, the names and addresses of the purchasers, the dates and times of the sales, and a notice to a purchaser that the making of false statements or misrepresentations may subject the purchaser to federal and state criminal penalties. The purchaser shall sign the written list of sales and enter his or her name, address, and the date and time of the sale. The person making the sale shall determine that the name entered by the purchaser corresponds with the name on the identification provided by the purchaser and that the date and time of the purchase is correct. The person making the sale shall enter the name of the product and the quantity sold on the list.
- ~~b.~~ c. The person shall maintain the record of identification required by this subsection for three years, after which the record must be destroyed. The person may not use or maintain the record for any private or commercial purpose or disclose the record to any person, except as required by law. The person shall disclose the record, upon request, to a law enforcement agency for a law enforcement purpose. A person who in good faith releases the information in the record of identification to federal, state, or local law enforcement authorities is immune from civil liability for such release unless the release constitutes gross negligence or intentional, wanton, or willful misconduct.
4. 5. A person may not deliver in an over-the-counter sale a methamphetamine precursor drug scheduled listed chemical product to a person under the age of eighteen years.
5. 6. It is a prima facie case of a violation of subsection 4 5 if the person making the sale did not require and obtain proof of age from the purchaser; unless from the purchaser's outward appearance the person would reasonably presume the purchaser to be twenty-five years of age or older. "Proof of age" means a document issued by a governmental agency which:
- a. Contains a description of the person or a photograph of the person, or both, and gives the person's date of birth; and
- b. Includes a passport, military identification card, or driver's license.
6. 7. It is an affirmative defense to a violation of subsection 4 5 if:
- a. The person making the sale required and obtained proof of age from the purchaser;
- b. The purchaser falsely represented the purchaser's proof of age by use of a false, forged, or altered document;

- c. The appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be at least eighteen years of age; and
  - d. The sale was made in good faith and in reliance upon the appearance and representation of proof of age of the purchaser.
7. 8. This section does not apply to ~~pediatric products labeled pursuant to federal regulation primarily intended for administration to children under twelve years of age according to label instructions or~~ to a product that the state board of pharmacy, upon application of a manufacturer, exempts from this section because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, or its salts or precursors.
9. A person may not:
- a. Make a false statement or misrepresentation in the written list of sale that is prepared and maintained as required by subsection 4; or
  - b. Purchase more than nine grams of ephedrine base, pseudoephedrine base, or phenylpropanolamine base in scheduled listed chemical products in a thirty-day period.
8. 10. A person who willfully violates subsection 1 or 9 is guilty of a class A misdemeanor. A person who willfully violates subsection 2, 3, ~~or 4, or 5~~ is guilty of an infraction.
9. 11. A person who is the owner, operator, or manager of the retail outlet or who is the supervisor of the employee or agent committing a violation of this section of the outlet where ~~methamphetamine precursor drugs~~ scheduled listed chemical products are available for sale is not subject to the penalties of this section if the person:
- a. Did not have prior knowledge of, participate in, or direct the employee or agent to commit, the violation of this section; and
  - b. ~~Documents~~ Certifies to the attorney general that the employee or agent, at the time of initial employment and each calendar year thereafter, participated in a training program approved by the attorney general providing the employee or agent with information regarding the state and federal regulations governing the sale, possession, and packaging of such ~~drugs~~ products.
- The approval of the training program by the attorney general is not subject to chapter 28-32.
40. 12. A political subdivision, including a home rule city or county, may not enact any ordinance relating to the sale by a retail distributor of over-the-counter products containing ephedrine, pseudoephedrine, or phenylpropanolamine. Any existing ordinance is void.

**(Effective after July 31, 2007) Retail or over-the-counter sale of methamphetamine precursor drugs - Penalty.**

1. The retail sale of nonliquid methamphetamine precursor drugs is limited to:
  - a. Sales in packages containing not more than a total of three grams of one or more methamphetamine precursor drugs, calculated in terms of ephedrine HCl and pseudoephedrine HCl; and
  - b. Sales in blister packs, each blister containing not more than two dosage units, or when the use of blister packs is technically infeasible, sales in unit dose packets or pouches.
2. A person may not deliver in a single over-the-counter sale more than two packages of a methamphetamine precursor drug or a combination of methamphetamine precursor drugs.
3. A person may not deliver in an over-the-counter sale a methamphetamine precursor drug to a person under the age of eighteen years.
4. It is a prima facie case of a violation of subsection 3 if the person making the sale did not require and obtain proof of age from the purchaser, unless from the purchaser's outward appearance the person would reasonably presume the purchaser to be twenty-five years of age or older. "Proof of age" means a document issued by a governmental agency which:
  - a. Contains a description of the person or a photograph of the person, or both, and gives the person's date of birth; and
  - b. Includes a passport, military identification card, or driver's license.
5. It is an affirmative defense to a violation of subsection 3 if:
  - a. The person making the sale required and obtained proof of age from the purchaser;
  - b. The purchaser falsely represented the purchaser's proof of age by use of a false, forged, or altered document;
  - c. The appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be at least eighteen years of age; and
  - d. The sale was made in good faith and in reliance upon the appearance and representation of proof of age of the purchaser.
6. This section does not apply to pediatric products labeled pursuant to federal regulation primarily intended for administration to children under twelve years of age according to label instructions or to a product that the state board of pharmacy, upon application of a manufacturer, exempts from this section because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, or its salts or precursors.

7. A person who willfully violates subsection 1 is guilty of a class A misdemeanor. A person who willfully violates subsection 2 or 3 is guilty of an infraction.
8. A person who is the owner, operator, or manager of the retail outlet or who is the supervisor of the employee or agent committing a violation of this section of the outlet where methamphetamine precursor drugs are available for sale is not subject to the penalties of this section if the person:
  - a. Did not have prior knowledge of, participate in, or direct the employee or agent to commit, the violation of this section; and
  - b. Documents that the employee or agent, at the time of initial employment and each calendar year thereafter, participated in a training program approved by the attorney general providing the employee or agent with information regarding the state and federal regulations governing the sale, possession, and packaging of such drugs.

The approval of the training program by the attorney general is not subject to chapter 28-32.
9. A political subdivision, including a home rule city or county, may not enact any ordinance relating to the sale by a retail distributor of over-the-counter products containing ephedrine, pseudoephedrine, or phenylpropanolamine. Any existing ordinance is void.

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

Approved April 20, 2007  
Filed April 24, 2007

**CHAPTER 208****HOUSE BILL NO. 1055**

(Human Services Committee)

(At the request of the State Board of Pharmacy)

**CONTROLLED SUBSTANCES SCHEDULE AND THEFT  
REPORTS**

AN ACT to create and enact section 19-03.1-20.1 of the North Dakota Century Code, relating to theft or loss of controlled substances reports; to amend and reenact subsections 5 and 7 of section 19-03.1-05, subsections 4, 6, and 7 of section 19-03.1-07, section 19-03.1-09, subsections 4 and 6 of section 19-03.1-11, and sections 19-03.1-13 and 19-03.1-22 of the North Dakota Century Code, relating to controlled substances; and to provide a penalty.

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

<sup>124</sup> **SECTION 1. AMENDMENT.** Subsections 5 and 7 of section 19-03.1-05 of the North Dakota Century Code are amended and reenacted as follows:

5. Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subsection only, the term "isomer" includes the optical, position, and geometric isomers):
  - a. Alpha-ethyltryptamine, its optical isomers, salts, and salts of isomers (also known as ethryptamine; a-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole).
  - b. Alpha-methyltryptamine.
  - c. 4-bromo-2, 5-dimethoxy-amphetamine (also known as 4-bromo-2, 5-dimethoxy-a-methylphenethylamine; 4-bromo-2, 5-DMA).
  - ~~e.~~ d. 4-bromo-2, 5-dimethoxyphenethylamine (also known as 4-bromo-2, 5-DMPEA).
  - ~~d.~~ e. 2,5-dimethoxy-amphetamine (also known as 2, 5-dimethoxy-a-methylphenethylamine; 2, 5-DMA).
  - ~~e.~~ f. 2,5-dimethoxy-4-ethylamphetamine (also known as DOET).

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<sup>124</sup> Section 19-03.1-05 was also amended by section 1 of Senate Bill No. 2317, chapter 209.

- g. 2,5-dimethoxy-4-(n)-propylthiophenethylamine (also known as 2C-T-7).
- h. 4-methoxyamphetamine (also known as 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine; PMA).
- i. 5-methoxy-3,4-methylenedioxy-amphetamine.
- j. 4-methyl-2,5-dimethoxy-amphetamine (also known as 4-methyl-2,5-dimethoxy-a-methylphenethylamine; "DOM" and "STP").
- k. 3,4-methylenedioxy amphetamine.
- l. 3,4-methylenedioxymethamphetamine (also known as MDMA).
- m. 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl, MDA, MDE, MDEA.
- n. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenylamine, and N-hydroxy MDA.
- o. 3,4,5-trimethoxy amphetamine.
- p. Bufotenine (also known as 3-(Beta-Dimethyl-aminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine).
- q. 5-methoxy-N,N-diisopropyltryptamine.
- r. Diethyltryptamine (also known as N, N-Diethyltryptamine; DET).
- s. Dimethyltryptamine (also known as DMT).
- t. Hashish.
- u. Ibogaine (also known as 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 iboga).
- v. Lysergic acid diethylamide.
- w. Marijuana.
- x. Mescaline.
- y. Parahexyl (also known as 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzol[b,d]pyran; Synhexyl).
- z. Peyote (all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every

compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds, or its extracts).

~~x~~ aa. N-ethyl-3-piperidyl benzilate.

~~y~~ bb. N-methyl-3-piperidyl benzilate.

~~z~~ cc. Psilocybin.

~~aa~~ dd. Psilocyn.

~~bb~~ ee. 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) Delta-1 cis or trans tetrahydrocannabinol, and their optical isomers.

(2) Delta-6 cis or trans tetrahydrocannabinol, and their optical isomers.

(3) Delta-3,4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

~~ee~~ ff. Ethylamine analog of phencyclidine (also known as N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE).

~~ed~~ gg. Pyrrolidine analog of phencyclidine (also known as 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP).

~~ee~~ hh. Thiophene analog of phencyclidine (also known as 1-[1-(2-thienyl)cyclohexyl] piperidine; 2-Thienylanalog of phencyclidine; TPCP, TCP).

~~ff~~ ii. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (also known as TCPy).

7. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

a. Aminorex (also known as 2-amino-5-phenyl-2-oxazoline, or 4,5-dihydro-5-phenyl-2-oxazolamine).

b. Cathinone (also known as 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone).

- c. Fenethylline.
- d. ( $\pm$ ) cis-4-methylaminorex (also known as ( $\pm$ ) cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine).
- e. Methcathinone (also known as (2-methylamino-1-phenylpropan-1-one)).
- f. N-Benzylpiperazine (also known as BZP, 1-benzylpiperazine).
- g. N-ethylamphetamine.
- ~~g~~ h. N, N-dimethylamphetamine (also known as N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine).

**SECTION 2. AMENDMENT.** Subsections 4, 6, and 7 of section 19-03.1-07 of the North Dakota Century Code are amended and reenacted as follows:

- 4. Opiates. Unless specifically excepted or unless in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation, dextropropoxyphene and levopropoxyphene excepted:
  - a. Alfentanil.
  - b. Alphaprodine.
  - c. Anileridine.
  - d. Bezitramide.
  - e. Bulk dextropropoxyphene (nondosage forms).
  - f. Carfentanil.
  - g. Dihydrocodeine.
  - h. Diphenoxylate.
  - i. Fentanyl.
  - j. Isomethadone.
  - k. Levo-alphaethylmethadol (LAAM).
  - ~~k~~ l. Levomethorphan.
  - ~~l~~ m. Levorphanol.
  - ~~m~~ n. Metazocine.
  - ~~n~~ o. Methadone.



- ⓪. p. Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
- ⓑ. q. Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.
- ⓒ. r. Pethidine (also known as meperidine).
- ⓓ. s. Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
- ⓔ. t. Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.
- ⓕ. u. Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
- ⓖ. v. Phenazocine.
- ⓗ. w. Priminodine.
- Ⓢ. x. Racemethorphan.
- Ⓣ. y. Racemorphan.
- Ⓤ. z. Remifentanil.
- Ⓥ. aa. Sufentanil.

6. 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. Glutethimide.
- ⓑ. c. Pentobarbital.
- ⓒ. d. Phencyclidine.
- ⓓ. e. Secobarbital.

7. Hallucinogenic substances.

- a. ~~Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration approved drug product. (Some other names for dronabinol: (6aR-trans)-6a, 7, 8, 10a-tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo [b,d] pyran-1-one, or (-)-delta-9-(trans)-tetrahydrocannabinol (THC).~~
- ⓑ. Nabilone [another name for nabilone (±)-trans-3-(1, 1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy-6, 6-dimethyl-9Hdibenzo [b, d] pyran-9-one].

**SECTION 3. AMENDMENT.** Section 19-03.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.1-09. Schedule III.**

1. The controlled substances listed in this section are included in schedule III.
2. Schedule III consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.
3. 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. Phendimetrazine.
4. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system:
  - a. Any compound, mixture, or preparation containing:
    - (1) Amobarbital;
    - (2) Secobarbital;
    - (3) Pentobarbital;or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.
  - b. Any suppository dosage form containing:
    - (1) Amobarbital;
    - (2) Secobarbital;

(3) Pentobarbital;

or any salt of any of these drugs and approved by the food and drug administration for marketing only as a suppository.

c. Any substance that contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules thereof.

d. ~~Buprenorphine.~~

e. Chlorhexadol.

f. ~~Dronabinol (synthetic) [(-)-delta-9-(trans)-tetrahydrocannabinol] in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration-approved drug product.~~

e. Embutramide.

~~g.~~ f. Gamma-hydroxybutyric acid in a United States food and drug administration-approved drug product.

~~h.~~ Glutethimide.

~~i.~~ g. Ketamine.

~~j.~~ h. Lysergic acid.

~~k.~~ i. Lysergic acid amide.

~~l.~~ j. Methyprylon.

~~m.~~ k. Sulfondiethylmethane.

~~n.~~ l. Sulfonethylmethane.

~~o.~~ m. Sulfonmethane.

~~p.~~ n. Tiletamine and zolazepam or any salt thereof. Some trade or other names for a tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam: 4-2(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]- diazepin-7(1H)-one, flupyrzapon.

5. Nalorphine.

6. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

- a. (1) Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.
  - b. (2) Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
  - c. (3) Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.
  - d. (4) Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
  - e. (5) Not more than 1.80 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
  - f. (6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
  - g. (7) 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. (8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
- b. Buprenorphine.
7. Anabolic steroids. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any of the following anabolic steroids:
- a. 3beta,17-dihydroxy-5a-androstane;
  - b. 3alpha,17beta-dihydroxy-5a-androstane;
  - c. 5alpha-androstan-3,17-dione;
  - d. 1-androstenediol (3beta,17beta-dihydroxy-5alpha-androst-1-ene);
  - e. 1-androstenediol (3alpha,17beta-dihydroxy-5alpha-androst-1-ene);
  - f. 4-androstenediol (3beta,17beta-dihydroxy-4-ene);

- g. 5-androstenediol (3beta,17beta-dihydroxy-androst-5-ene);
- h. 1-androstenedione ([5alpha]-androst-1-en-3,17-dione);
- i. 4-androstenedione (androst-4-en-3,17-dione);
- j. 5-androstenedione (androst-5-en-3,17-dione);
- k. Bolasterone (7alpha,17alpha-dimethyl-17beta-hydroxyandrost-4-en-3-one);
- l. Boldenone (17beta-hydroxyandrost-1,4,-diene-3-one);
- ~~b.~~ ~~Chlorotestosterone;~~
- m. Calusterone (7beta,17alpha-dimethyl-17beta-hydroxyandrost-4-en-3-one);
- ~~e.~~ n. Clostebol (4-chloro-17beta-hydroxyandrost-4-en-3-one);
- ~~d.~~ o. ~~Dehydrochloromethyltestosterone~~  
Dehydrochloromethyltestosterone (4-chloro-17beta-hydroxy-17alpha-methyl-androst-1,4-dien-3-one);
- ~~e.~~ p. ~~Dihydrotestosterone~~ Delta-1-dihydrotestosterone (also known as '1-testosterone') (17beta-hydroxy-5alpha-androst-1-en-3-one);
- q. 4-dihydrotestosterone (17beta-hydroxy-androstan-3-one);
- f. r. Drostanolone (17beta-hydroxy-2alpha-methyl-5alpha-androstan-3-one);
- ~~g.~~ s. Ethylestrenol (17alpha-ethyl-17beta-hydroxyestr-4-ene);
- ~~h.~~ t. Fluoxymesterone (9-fluoro-17alpha-methyl-11beta,17beta-dihydroxyandrost-4-en-3-one);
- ~~i.~~ u. ~~Formebolone~~ Formebolone (2-formyl-17alpha-methyl-11alpha,17beta-dihydroxyandrost-1,4-dien-3-one);
- v. Furazabol (17alpha-methyl-17beta-hydroxyandrostano[2,3-c]-furazan);
- w. 13beta-ethyl-17alpha-hydroxygon-4-en-3-one;
- x. 4-hydroxytestosterone (4,17beta-dihydroxy-androst-4-en-3-one);
- y. 4-hydroxy-19-nortestosterone (4,17beta-dihydroxy-estr-4-en-3-one);
- z. Mestanolone (71alpha-methyl-17beta-hydroxy-5-androstan-3-one);
- ~~j.~~ aa. Mesterolone (1alpha-methyl-17beta-hydroxy-[5alpha]-androstan-3-one);

- ~~k~~ bb. Methandienone  
(17alpha-methyl-17beta-dihydroxyandrost-1,4-dien-3-one);
- ~~l~~ l. ~~Methandranone~~;
- ~~m~~ cc. Methandriol  
(17alpha-methyl-3beta,17beta-dihydroxyandrost-5-ene);
- ~~n~~ n. ~~Methandrostenolone~~;
- ~~o~~ dd. Methenolone  
(1-methyl-17beta-hydroxy-5alpha-androst-1-en-3-one);
- ee. 17alpha-methyl-3beta,17beta-dihydroxy-5a-androstane;
- ff. 17alpha-methyl-3alpha,17beta-dihydroxy-5a-androstane;
- gg. 17alpha-methyl-3beta,17beta-dihydroxyandrost-4-ene;
- hh. 17alpha-methyl-4-hydroxynandrolone  
(17alpha-methyl-4-hydroxy-17beta-hydroxyestr-4-en-3-one);
- ii. Methyldienolone  
(17alpha-methyl-17beta-hydroxyestra-4,9(10)-dien-3-one);
- jj. Methyltrienolone  
(17alpha-methyl-17beta-hydroxyestra-4,9(11)-trien-3-one);
- ~~p~~ kk. Methyltestosterone  
(17alpha-methyl-17beta-hydroxyandrost-4-en-3-one);
- ~~q~~ ll. Mibolerone  
(7alpha,17alpha-dimethyl-17beta-hydroxyestr-4-en-3-one);
- mm. 17alpha-methyl-delta1-dihydrotestosterone  
(17bbeta-hydroxy-17alpha-methyl-5alpha-androst-1-en-3-one)  
(also known as '17-alpha-methyl-1-testosterone');
- ~~r~~ nn. Nandrolone (17beta-hydroxyestr-4-en-3-one);
- oo. 19-nor-4-androstenediol (3beta,17beta-dihydroxyestr-4-ene);
- pp. 19-nor-4-androstenediol (3alpha,17beta-dihydroxyestr-4-ene);
- qq. 19-nor-5-androstenediol (3beta,17beta-dihydroxyestr-5-ene);
- rr. 19-nor-5-androstenediol (3alpha,17-beta-dihydroxyester-5-ene);
- ss. 19-nor-4-androstenedione (estr-4-en-3,17-dione);
- tt. 19-nor-5-androstenedione (estr-5-en-3,17-dione);
- uu. Norbolethone  
(13beta,17alpha-diethyl-17beta-hydroxygon-4-en-3-one);
- vv. Norclostebol (4-chloro-17beta-hydroxyestr-4-en-3-one);

- Ⓔ. ww. Norethandrolone (17alpha-ethyl-17beta-hydroxyestr-4-en-3-one);
- xx. Normethandrolone  
(17alpha-methyl-17beta-hydroxyestr-4-en-3-one);
- Ⓕ. yy. Oxandrolone (17alpha-methyl-17beta-hydroxy-2-oxa-[5alpha]-androstan-3-one);
- Ⓖ. zz. Oxymesterone  
(17alpha-methyl-4-17beta-dihydroxyandrost-4-en-3-one);
- Ⓗ. aaa. Oxymetholone  
(17alpha-methyl-2-hydroxymethylene-17beta-hydroxy[5alpha]-androstan-3-one);
- w. **Stanolone**;
- Ⓚ. bbb. Stanozolol (17alpha-methyl-17beta-hydroxy[5alpha]-androst-2-eno[3,2-c]-pyrazole);
- ccc. Stenbolone  
(17beta-hydroxy-2-methyl-[5alpha]-androst-1-en-3-one);
- Ⓛ. ddd. Testolactone  
(13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);
- Ⓜ. eee. Testosterone (17beta-hydroxyandrost-4-en-3-one);
- fff. Tetrahydrogestrinone  
(13beta,17alpha-diethyl-17beta-hydroxygon-4,9,11-trien-3-one);
- Ⓝ. ggg. Trenbolone (17beta-hydroxyestr-4,9,11-trien-3-one);

or any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt, ester, or isomer promotes muscle growth.

The term does not include an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the secretary of health and human services for administration unless any person prescribes, dispenses, possesses, delivers, or distributes for human use.

8. Hallucinogenic substances. Dronabinol (synthetic) [(-)-delta-9-(trans)-tetrahydrocannabinol] in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration-approved drug product.
9. The board may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections 3 and 4 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the

potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

**SECTION 4. AMENDMENT.** Subsections 4 and 6 of section 19-03.1-11 of the North Dakota Century Code are amended and reenacted as follows:

4. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:
  - a. Alprazolam.
  - b. Barbitol.
  - c. Bromazepam.
  - d. Butorphanol.
  - e. Camazepam.
  - f. Chloral betaine.
  - g. Chloral hydrate.
  - h. Chlordiazepoxide.
  - i. Clobazam.
  - j. Clonazepam.
  - k. Clorazepate.
  - l. Clotiazepam.
  - m. Cloxazolam.
  - n. Delorazepam.
  - o. Diazepam.
  - p. Dichloralphenazone.
  - q. Estazolam.
  - r. Ethchlorvynol.
  - s. Ethinamate.
  - t. Ethyl loflazepate.
  - u. Fludiazepam.
  - v. Flurazepam.



- w. Halazepam.
- x. Haloxazolam.
- y. Ketazolam.
- z. Loprazolam.
- aa. Lorazepam.
- bb. Lormetazepam.
- cc. Mebutamate.
- dd. Medazepam.
- ee. Meprobamate.
- ff. Methohexital.
- gg. Methylphenobarbital (also known as mephobarbital).
- hh. Midazolam.
- ii. Nimetazepam.
- jj. Nitrazepam.
- kk. Nordiazepam.
- ll. Oxazepam.
- mm. Oxazolam.
- nn. Paraldehyde.
- oo. Petrichloral.
- pp. Phenobarbital.
- qq. Pinazepam.
- rr. Prazepam.
- ss. Quazepam.
- ~~tt.~~ ~~Sibutramine.~~
- ~~uu.~~ tt. Temazepam.
- ~~vv.~~ uu. Tetrazepam.
- ~~ww.~~ vv. Triazolam.
- ~~xx.~~ ww. Zaleplon.

~~yy.~~ xx. Zolpidem.

yy. Zopiclone.

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. Cathine.
  - b. Diethylpropion.
  - c. Fencamfamin.
  - d. Fenproporex.
  - e. Mazindol.
  - f. Mefenorex.
  - g. Modafinil.
  - h. Pemoline (including organometallic complexes and chelates thereof).
  - i. Phentermine.
  - j. Pipradrol.
  - k. Sibutramine.
  - l. SPA ((-)-1-dimethylamino-1, 2-diphenylethane).

**SECTION 5. AMENDMENT.** Section 19-03.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.1-13. Schedule V.**

1. The controlled substances listed in this section are included in schedule V.
2. Schedule V consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.
3. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing buprenorphine or its salts.
4. Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which includes 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 narcotic drugs alone.

- a. Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.
  - b. Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.
  - c. Not more than 100 milligrams of ethylmorphine 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.
5. Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts: Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].
6. Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers: Pyrovalerone.

**SECTION 6.** Section 19-03.1-20.1 of the North Dakota Century Code is created and enacted as follows:

**19-03.1-20.1. Report of any theft or loss.** The registrant shall immediately, within one business day, notify the state board of pharmacy of any theft or significant loss of controlled substances. This report may be telephoned, faxed, or e-mailed to the state board of pharmacy. In addition, significant loss has been further defined to include a list of factors that are relevant in deciding whether a loss was significant. This list is as follows:

1. The actual quantity of controlled substances lost in relation to the type of business;
2. The specific controlled substances lost;
3. Whether the loss of the controlled substances can be associated with access to those controlled substances by specific individuals, or whether the loss can be attributed to unique activities that may take place involving the controlled substances;
4. A pattern of losses over a specific time period, whether the losses appear to be random, and the results of efforts taken to resolve the losses; and, if known

5. Whether specific controlled substances are likely candidates for diversion; and
6. Local trends and other indicators of the diversion potential of the missing controlled substance.

**SECTION 7. AMENDMENT.** Section 19-03.1-22 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.1-22. Prescriptions.**

1. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner. When the patient is a hospice patient or resides in a licensed long-term care facility and the prescription has been signed by the practitioner before faxing, the facsimile may serve as the original prescription without another signature. The prescription may not be filled more than six months after the date it was written.
2. In emergency situations, as defined by rule of the board, schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing, and filed by the pharmacy. Prescriptions must be retained in conformity with the requirements of section 19-03.1-20. No prescription for a schedule II substance may be refilled.
3. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug as determined under this chapter or chapter 19-02.1, may not be dispensed without a written or oral prescription of a practitioner. The prescription may not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner. Any oral prescription for such drugs must be promptly reduced to writing by the pharmacist, intern, or technician on a new prescription blank ~~and must be signed within seven days by the practitioner who issued the same.~~ When the patient is a hospice patient or resides in a licensed long-term care facility and the prescription has been signed by the practitioner before faxing, the facsimile may serve as the original prescription without another signature.
4. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance included in schedule V must be dispensed without the written or oral prescription of a practitioner. The prescription may not be filled or refilled more than six months after the date thereof or be refilled more than five times unless renewed by the practitioner. Any oral prescription for such compound, mixture, or preparation must be promptly reduced to writing by the pharmacist, intern, or technician on a new prescription blank ~~and must be signed within seven days by the practitioner who issued the prescription.~~ When the patient is a hospice patient or resides in a licensed long-term care facility and the prescription has been signed by

the practitioner before faxing, the facsimile may serve as the original prescription without another signature.

Approved March 23, 2007  
Filed March 23, 2007

**CHAPTER 209****SENATE BILL NO. 2317**

(Senators Oehlke, Christmann)

(Representative Heller)

**SALVIA DIVINORUM AS CONTROLLED SUBSTANCE**

AN ACT to create and enact a new subdivision to subsection 5 of section 19-03.1-05 of the North Dakota Century Code, relating to including salvia divinorum as a schedule I controlled substance.

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

<sup>125</sup> **SECTION 1.** A new subdivision to subsection 5 of section 19-03.1-05 of the North Dakota Century Code is created and enacted as follows:

Salvia divinorum, salvinorin A, or any of the active ingredients of salvia divinorum.

Approved April 26, 2007

Filed April 27, 2007

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<sup>125</sup> Section 19-03.1-05 was also amended by section 1 of House Bill No. 1055, chapter 208.

**CHAPTER 210****HOUSE BILL NO. 1206**

(Representatives Ruby, Bellew, DeKrey, Price)  
(Senators Fiebiger, Nething)

**DRUG ADDICTION EVALUATIONS**

AN ACT to amend and reenact subsection 7 of section 19-03.1-23 of the North Dakota Century Code, relating to drug addiction evaluations.

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

<sup>126</sup> **SECTION 1. AMENDMENT.** Subsection 7 of section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

7. Except as provided by section 19-03.1-45, a court may order a person who violates this chapter or chapter 19-03.4 ~~must to~~ undergo a drug addiction evaluation by a licensed addiction counselor. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. ~~The~~ If ordered, the evaluation must be submitted to the court ~~for consideration when before~~ imposing punishment for a felony violation of ~~this chapter or chapter 19-03.4, and may be submitted before or after the imposing of punishment for or~~ a misdemeanor violation ~~of this chapter or chapter 19-03.4.~~

Approved March 2, 2007  
Filed March 2, 2007

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<sup>126</sup> Section 19-03.1-23 was also amended by section 1 of House Bill No. 1224, chapter 211.

## CHAPTER 211

### HOUSE BILL NO. 1224

(Representatives Klemin, Kretschmar, L. Meier)  
(Senators Dever, Lyson, Nething)

### COURT RECORDS SEALED

AN ACT to amend and reenact subsection 8 of section 19-03.1-23, subsection 3 of section 29-10.2-05, and section 31-13-07 of the North Dakota Century Code, relating to changing expunged records to sealed records.

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

<sup>127</sup> **SECTION 1. AMENDMENT.** Subsection 8 of section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

8. When a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana and a judgment of guilt is entered, a court, upon motion, shall ~~expunge~~ seal the court record of that conviction from the record if the person is not subsequently convicted within two years of a further violation of this chapter and has not been convicted of any other criminal offense. Once sealed, the court record may not be opened even by order of the court.

**SECTION 2. AMENDMENT.** Subsection 3 of section 29-10.2-05 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~No~~ A report or presentment of a state grand jury relating to an individual which is not accompanied by a true bill of indictment may not be made public or be published until the individual concerned has been furnished a copy ~~thereof~~ of the report and given thirty days to file with the district court a motion to suppress or ~~expunge~~ seal the report or that a portion which that is improper and unlawful. ~~Any such~~ The motion, whether granted or denied, automatically acts as a stay of public announcement of ~~such the~~ the report, or portion thereof of the report, until the district court's ruling on the motion is either affirmed or denied by an appellate court, or until the time ~~within in~~ in which ~~such the~~ the order may be se appealed has expired, whichever occurs first. The report or portion of the report which is suppressed or sealed may not be opened even by order of the court.

<sup>128</sup> **SECTION 3. AMENDMENT.** Section 31-13-07 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>127</sup> Section 19-03.1-23 was also amended by section 1 of House Bill No. 1206, chapter 210.

<sup>128</sup> Section 31-13-07 was also amended by section 2 of House Bill No. 1197, chapter 285.



**31-13-07. Removal of DNA profiles from data base.** A person whose DNA profile has been included in the data base pursuant to under this chapter may petition the district court ~~for expungement~~ to seal the court record on the grounds that the conviction on which the authority for including the DNA profile was based has been reversed or the case dismissed. The laboratory shall expunge all identifiable information in the data base pertaining to the person and destroy all samples from the person upon receipt of a certified order. The detention, arrest, or conviction of a person based upon data base information is not invalidated if it is later determined that the specimens or samples were obtained or placed in the data base by mistake. The sealed record may not be opened even by order of the court.

Approved March 2, 2007

Filed March 2, 2007

**CHAPTER 212****SENATE BILL NO. 2134**

(Senator J. Lee)

(At the request of the State Board of Pharmacy)

**PRESCRIPTION DRUG MONITORING PROGRAM**

AN ACT to create and enact chapter 19-03.5 of the North Dakota Century Code, relating to a prescription drug monitoring program for controlled substances; to repeal section 50-06-27 of the North Dakota Century Code, relating to a prescription drug monitoring program; to provide a penalty; and to declare an emergency.

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

**SECTION 1.** Chapter 19-03.5 of the North Dakota Century Code is created and enacted as follows:

**19-03.5-01. Definitions.**

1. "Board" means the state board of pharmacy.
2. "Central repository" means a place where electronic data related to the prescribing and dispensing of controlled substances is collected.
3. "Controlled substance" means a drug, substance, or immediate precursor defined in section 19-03.1-01 and nonscheduled substances containing tramadol or carisoprodol.
4. "De-identified information" means health information that is not individually identifiable information because an expert has made that determination under title 45, Code of Federal Regulations, section 164.514 or direct identifiers and specified demographic information have been removed in accordance with the requirements of that section.
5. "Dispense" means to deliver a controlled substance to an ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for delivery.
6. "Dispenser" means an individual who delivers a controlled substance to the ultimate user but does not include a licensed hospital pharmacy that provides a controlled substance for the purpose of inpatient hospital care or a licensed health care practitioner or other authorized individual in those instances when the practitioner administers a controlled substance to a patient.
7. "Individually identifiable health information" has the meaning set forth in title 45, Code of Federal Regulations, section 160.103.
8. "Patient" means an individual or the owner of an animal who is the ultimate user of a controlled substance for whom a prescription is issued or for whom a controlled substance is dispensed.

9. "Prescriber" means an individual licensed, registered, or otherwise authorized by the jurisdiction in which the individual is practicing to prescribe drugs in the course of professional practice.
10. "Program" means the prescription drug monitoring program implemented under this chapter.

**19-03.5-02. Requirements for prescription drug monitoring program.**

1. The board shall establish and maintain a program for the monitoring of prescribing and dispensing of all controlled substances.
2. Each dispenser shall submit to the board by electronic means information regarding each prescription dispensed for a controlled substance. The information submitted for each prescription must include all of the data elements in the American society for automation in pharmacy rules-based standard implementation guide for prescription monitoring programs issued August 31, 2005, version 003, release 000.
3. Each dispenser shall submit the information in accordance with transmission methods and frequency established by the board.
4. The board may issue an extension of time to a dispenser that is unable to submit prescription information by electronic means.

**19-03.5-03. Access to prescription information.**

1. Information submitted to the central repository is confidential and may not be disclosed except as provided in this section.
2. The board shall maintain procedures to ensure that the privacy, confidentiality, and security of patient information collected, recorded, transmitted, and maintained is not disclosed except as provided in this section.
3. Unless disclosure is prohibited by law, the board may provide data in the central repository to:
  - a. A prescriber for the purpose of providing medical care to a patient, a dispenser for the purpose of filling a prescription or providing pharmaceutical care for a patient, a prescriber or dispenser inquiring about the prescriber's or dispenser's own prescribing activity, or a prescriber or dispenser in order to further the purposes of the program;
  - b. An individual who requests the prescription information of the individual or the individual's minor child;
  - c. State boards and regulatory agencies that are responsible for the licensing of individuals authorized to prescribe or dispense controlled substances if the board or regulatory agency is seeking information from the central repository that is relevant to an investigation of an individual who holds a license issued by that board or regulatory agency;

- d. Local, state, and federal law enforcement or prosecutorial officials engaged in the enforcement of laws relating to controlled substances who seek information for the purpose of an investigation or prosecution of the drug-related activity or probation compliance of an individual;
  - e. The department of human services for purposes regarding the utilization of controlled substances by a medicaid recipient;
  - f. Workforce safety and insurance for purposes regarding the utilization of controlled substances by a claimant;
  - g. Judicial authorities under grand jury subpoena or court order or equivalent judicial process for investigation of criminal violations of controlled substances laws;
  - h. Public or private entities for statistical, research, or educational purposes after the information is de-identified with respect to any prescriber, dispenser, or patient who received a prescription for a controlled substance; or
  - i. A peer review committee which means any committee of a health care organization, composed of health care providers, employees, administrators, consultants, agents, or members of the health care organization's governing body, which conducts professional peer review as defined in chapter 23-34.
4. The board shall maintain a record of each person who requests information from the central repository. The board may use the records to document and report statistics and outcomes. The board may provide records of the requests for information to:
- a. A board or regulatory agency responsible for the licensing of individuals authorized to prescribe or dispense controlled substances that is engaged in an investigation of the individual who submitted the request for information from the central repository; and
  - b. Local, state, and federal law enforcement or prosecutorial officials engaged in the enforcement of laws relating to controlled substances for the purpose of an active investigation of an individual who requested information from the central repository.

**19-03.5-04. Authority to contract.** The board is authorized to contract with another agency of this state or with a private vendor to facilitate the effective operation of the prescription drug monitoring program. Any contractor is bound to comply with the provisions regarding confidentiality of prescription drug information in this chapter and is subject to termination or sanction or both for unlawful acts.

**19-03.5-05. Immunity.** Nothing in this chapter requires a prescriber or dispenser to obtain information about a patient from the central repository prior to prescribing or dispensing a controlled substance. A prescriber, dispenser, or other health care practitioner may not be held liable in damages to any person in any civil action on the basis that the prescriber, dispenser, or other health care practitioner did or did not seek to obtain information from the central repository. Unless there is shown a lack of good faith, the board, any other state agency, a prescriber,

dispenser, or any other individual in proper possession of information provided under this chapter may not be subject to any civil liability by reason of:

1. The furnishing of information under the conditions provided in this chapter;
2. The receipt and use of, or reliance on, such information;
3. The fact that any such information was not furnished; or
4. The fact that such information was factually incorrect or was released by the board to the wrong person or entity.

**19-03.5-06. Data review and referral - Corrections.**

1. a. The board shall review the information received by the central repository to determine if there is reason to believe:
  - (1) A prescriber or dispenser may have engaged in an activity that may be a basis for disciplinary action by the board or regulatory agency responsible for the licensing of the prescriber or dispenser; or
  - (2) A patient may have misused, abused, or diverted a controlled substance.
- b. If the board determines that there is reason to believe that any of the acts described in subdivision a may have occurred, the board may notify the appropriate law enforcement agency or the board or regulatory agency responsible for the licensing of the prescriber or dispenser. The advisory council described in section 19-03.5-07 shall recommend guidelines to the board for reviewing data and making determinations with respect to the referral of patients, prescribers, or dispensers to law enforcement or appropriate regulatory authorities.
2. A patient, dispenser, or prescriber may request that erroneous information contained in the central repository be corrected or deleted. The board shall review the request to determine if the information is erroneous with respect to the patient, prescriber, or dispenser. The board shall correct any erroneous information the board discovers due to the request for review by a patient, prescriber, or dispenser.
3. The board shall adopt a procedure to allow information contained in the central repository to be shared with officials in other states acting for the purpose of controlled substance monitoring and for requesting and receiving similar controlled substance monitoring information from other states.

**19-03.5-07. Advisory council.**

1. An advisory council is established to advise and make recommendations to the board regarding how to best use the program to improve patient care and foster the goal of reducing misuse, abuse, and diversion of controlled substances; to encourage cooperation and coordination among state, local, and federal agencies and other states

to reduce the misuse, abuse, and diversion of controlled substances; and to provide advice and recommendations to the board regarding any other matters as requested by the board. The advisory council may have access to central repository information to fulfill its duties.

2. The advisory council must consist of:
  - a. One dispenser selected by the board;
  - b. One physician selected by the North Dakota medical association;
  - c. One prescriber selected by the board of nursing;
  - d. A designee of the attorney general;
  - e. A designee of the department of human services;
  - f. One prescriber selected by the board of medical examiners;
  - g. One prescriber selected by the North Dakota nurses association; and
  - h. Any other prescriber or dispenser determined by the board to be necessary to meet a mandate of, or avoid a delay in implementing, an appropriations measure. The number of additional members selected by the board must be limited to the number necessary to meet the mandate or avoid the delay of an appropriation.
3. The advisory council shall make recommendations to the board regarding:
  - a. Safeguards for the release of information to individuals who have access to the information contained in the central repository;
  - b. The confidentiality of program information and the integrity of the patient's relationship with the patient's health care provider;
  - c. Advancing the purposes of the program, including enhancement of the quality of health care delivery in this state; and
  - d. The continued benefits of maintaining the program in relationship to the cost and other burdens to the state.
4. The board may provide reimbursement of expenses and per diem to members of the advisory council within the limits provided in state law.

**19-03.5-08. Extraterritorial application.** The board may provide data in the central repository to a practitioner or controlled substances monitoring system in another state, if the disclosure to a practitioner or the prescription drug monitoring program located in this state is authorized by this chapter.

**19-03.5-09. Authority to adopt rules.** The board may adopt rules that set forth the procedures and methods for implementing this chapter.

**19-03.5-10. Reporting unlawful acts and penalties.**

1. The board may report to a dispenser's licensing board any dispenser who knowingly fails to submit prescription drug monitoring information to the board as required by this chapter or who knowingly submits incorrect prescription information to the board.
2. A person, including a vendor, who uses or discloses prescription drug monitoring information in violation of this chapter is subject to the penalty provided in section 12.1-13-01.

**SECTION 2. REPEAL.** Section 50-06-27 of the North Dakota Century Code is repealed.

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

Approved April 4, 2007  
Filed April 5, 2007

**CHAPTER 213****HOUSE BILL NO. 1121**

(Transportation Committee)

(At the request of the State Department of Health)

**FUEL SALES AND DEFINITIONS**

AN ACT to create and enact section 19-10-03.3 of the North Dakota Century Code, relating to the retail sale of alternative fuels; and to amend and reenact sections 19-10-01 and 19-10-10 of the North Dakota Century Code, relating to petroleum product definitions and specifications.

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

**SECTION 1. AMENDMENT.** Section 19-10-01 of the North Dakota Century Code is amended and reenacted as follows:

**19-10-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Adulterated", when used to describe any petroleum or alternative fuel product, denotes a petroleum or alternative fuel product which fails to meet the specifications prescribed by this chapter.
2. "Alternative fuel" means a fuel for an engine or vehicle, or used as heating oil, other than a petroleum-based fuel.
3. "Biodiesel" means any non-petroleum-based diesel fuel made from renewable resources such as vegetable oils or animal fats.
4. "Department" means the state department of health.
- ~~3-~~ 5. "Diesel fuel" is any petroleum product intended for use or offered for sale as a fuel for engines in which the fuel is injected into the combustion chamber and ignited by pressure without electric spark.
- 4- 6. "Gasoline" is a refined petroleum naphtha which by its composition is suitable for use as a carburant in internal combustion engines.
- ~~5-~~ 7. "Heating oil" is any petroleum product intended for use or offered for sale as a furnace oil, range oil, or fuel oil for heating and cooking purposes to be used in burners other than wick burners regardless of whether the product is designated as furnace oil, range oil, fuel oil, gas oil, or is given any other name or designation.
- ~~6-~~ 8. "Kerosene" is a petroleum fraction which is free from water, additives, foreign or suspended matter, and is suitable for use as an illuminating oil.
- 7- 9. "Lubricating oil" is any petroleum, or other product, used for the purpose of reducing friction, heat, or wear in automobiles, tractors, gasoline engines, diesel engines, and other machines.



- 8- 10. "Misbranded", when used in connection with any petroleum or alternative fuel product, denotes a petroleum or alternative fuel product which is not labeled as required under the provisions of this chapter.
- 9- 11. "Sell" and "sale" includes the keeping, offering, or exposing for sale, transportation, or exchange of the restricted or prohibited article.
- 40- 12. "Tractor fuel" is any ~~petroleum~~ product, other than gasoline or kerosene, intended for use or offered for sale as a fuel for tractors, regardless of whether the product is designated as distillate, gas oil, fuel oil, or is given any other name or designation.

**SECTION 2.** Section 19-10-03.3 of the North Dakota Century Code is created and enacted as follows:

**19-10-03.3. Retail sale of alternative fuels - Notice required.** A dealer may not sell at retail alternative fuel unless the dispensing unit and price advertising contains the name and main components of the alternative fuel or alternative fuel blend. The disclosure must follow the same labeling specifications that apply for petroleum-based fuels. The department shall adopt rules under chapter 28-32 for labeling of petroleum products and alternative fuels. A producer of alternative fuels or alternative fuel blends may provide a retailer with a label promoting the benefits of the alternative fuel if the label meets the requirements of this section.

**SECTION 3. AMENDMENT.** Section 19-10-10 of the North Dakota Century Code is amended and reenacted as follows:

**19-10-10. Specifications for petroleum products - Tests used.** Specifications for gasoline, kerosene, tractor fuel, diesel oil, heating oil, lubricating oil, alternative fuels, and liquefied petroleum gases, including propane, propylene, normal butane or isobutane, and butylene, must be determined by the department and must be based upon nationally recognized standards. When so determined by the department and adopted and promulgated as regulations and orders of the department in accordance with the provisions of chapter 28-32, such specifications must be the specifications for such petroleum products sold in this state and official tests of such petroleum products must be based upon test specifications so determined adopted and promulgated.

Approved March 23, 2007  
Filed March 23, 2007

**CHAPTER 214****SENATE BILL NO. 2159**

(Senators Heitkamp, Nething)

(Representatives Gulleson, Headland, Kroeber, Pollert)

**ETHANOL DISPENSING UNIT LABELING  
REQUIREMENTS**

AN ACT to amend and reenact section 19-10-03.1 of the North Dakota Century Code, relating to ethanol dispensing unit labeling requirements.

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

**SECTION 1. AMENDMENT.** Section 19-10-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**19-10-03.1. Retail sale of alcohol-blended gasoline - ~~Notice required~~ Label requirements.** No dealer may sell at retail alcohol-blended gasoline unless the dispensing unit and any price advertising bear 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 and the dispensing unit bears the ethanol promotion and information council label or logo. The disclosure must be in letters at least the same size as those used for the label of the basic grade of gasoline and must be next to the gasoline grade label. A producer of alcohol-blended gasoline may provide a retailer with a label promoting the benefits of alcohol-blended gasoline, if the label at least meets the requirements of this section.

Approved March 7, 2007

Filed March 8, 2007

## CHAPTER 215

### SENATE BILL NO. 2323

(Senators Wanzek, Christmann, Klein)  
(Representatives D. Johnson, Mueller, Pollert)

### PESTICIDE REGISTRATION FEES

AN ACT to amend and reenact section 19-18-04 of the North Dakota Century Code, relating to pesticide registration fees.

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

**SECTION 1. AMENDMENT.** Section 19-18-04 of the North Dakota Century Code is amended and reenacted as follows:

#### **19-18-04. (~~Effective through June 30, 2007~~) Registration - Fees.**

1. Any person before selling or offering for sale any pesticide for use within this state shall file biennially with the commissioner an application for registration of the pesticide. The application must:
  - a. Give the name and address of each manufacturer or distributor.
  - b. Give the name and brand of each product to be registered.
  - c. Be accompanied by a current label of each product to be registered.
  - d. Be accompanied by a registration fee of three hundred fifty dollars for each product to be registered. At the close of each calendar month, the commissioner shall transmit to the state treasurer all moneys received for the registrations. The state treasurer shall credit fifty dollars for each registered product to the general fund in the state treasury and the remainder of the registration fee for each registered product to the environment and rangeland protection fund.
  - e. Be accompanied by a material safety data sheet for each product to be registered.
2. The commissioner may require an applicant or registrant to provide efficacy, toxicity, residue, and any other data necessary to determine if the pesticide will perform its intended function without unreasonable adverse effects on the environment. If the commissioner finds that the application conforms to law, the commissioner shall issue to the applicant a certificate of registration of the product.
3. Each registration covers a designated two-year period beginning January first of each even-numbered year and expiring December thirty-first of the following year. A certificate of registration may not be issued for a term longer than two years, and is not transferable from one person to another, or from the ownership to whom issued to another ownership. A penalty of fifty percent of the license or registration fee

must be imposed if the license or certificate of registration is not applied for on or before January thirty-first following the expiration date. Each product must go through a two-year discontinuance period in order to clear all outstanding products in the channel of trade.

4. This section does not apply to a pesticide sold by a retail dealer if the registration fee has been paid by the manufacturer, jobber, or any other person, as required by this section.

**(Effective July 1, 2007) Registration - Fees.** Any person before selling or offering for sale any pesticide for use within this state shall file biennially with the commissioner an application for registration of the pesticide. The application must:

1. Give the name and address of each manufacturer or distributor.
2. Give the name and brand of each product to be registered.
3. Be accompanied by a current label of each product to be registered.
4. Be accompanied by a registration fee of three hundred dollars for each product to be registered. At the close of each calendar month, the commissioner shall transmit to the state treasurer all moneys received for the registrations. The state treasurer shall credit fifty dollars for each registered product to the general fund in the state treasury and the remainder of the registration fee for each registered product to the environment and rangeland protection fund.
5. Be accompanied by a material safety data sheet for each product to be registered.

The commissioner may require an applicant or registrant to provide efficacy, toxicity, residue, and any other data necessary to determine if the pesticide will perform its intended function without unreasonable adverse effects on the environment. If the commissioner finds that the application conforms to law, the commissioner shall issue to the applicant a certificate of registration of the product.

Each registration covers a designated two-year period beginning January first of each even-numbered year and expiring December thirty-first of the following year. A certificate of registration may not be issued for a term longer than two years, and is not transferable from one person to another, or from the ownership to whom issued to another ownership. A penalty of fifty percent of the license or registration fee must be imposed if the license or certificate of registration is not applied for on or before January thirty-first following the expiration date. Each product must go through a two-year discontinuance period in order to clear all outstanding products in the channel of trade.

This section does not apply to a pesticide sold by a retail dealer if the registration fee has been paid by the manufacturer, jobber, or any other person, as required by this section.

Approved April 26, 2007  
Filed April 27, 2007

# GAME, FISH, PREDATORS, AND BOATING

## CHAPTER 216

### HOUSE BILL NO. 1184

(Representatives R. Kelsch, Hanson, Porter)  
(Senators Cook, Freborg, Heitkamp)

### HANDGUN USE WHILE BOW HUNTING

AN ACT to create and enact a new section to chapter 20.1-01 of the North Dakota Century Code, relating to the use of handguns while hunting with bow and arrow or crossbow.

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

**SECTION 1.** A new section to chapter 20.1-01 of the North Dakota Century Code is created and enacted as follows:

**Use of handguns while hunting with bow and arrow or crossbow.**  
Notwithstanding any other provision of law, an individual may have a handgun, as defined in section 62.1-01-01, in that individual's possession while hunting during any lawful archery hunting season.

Approved March 2, 2007  
Filed March 2, 2007

**CHAPTER 217****SENATE BILL NO. 2293**

(Senators Erbele, Hacker, Tollefson)  
(Representatives Bellew, DeKrey, Wieland)

**MILITARY HUNTING PRIVILEGES**

AN ACT to create and enact a new subsection to section 20.1-03-04 of the North Dakota Century Code, relating to hunting, fishing, and trapping privileges for active duty military members.

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

**SECTION 1.** A new subsection to section 20.1-03-04 of the North Dakota Century Code is created and enacted as follows:

Upon presentation of valid leave papers and a valid North Dakota operator's license, a resident who is on leave and is on active duty as a member of the United States armed forces or the United States merchant marine may hunt small game, fish, or trap during the open season without a license.

Approved May 4, 2007  
Filed May 4, 2007

**CHAPTER 218****SENATE BILL NO. 2147**  
(Senator Heitkamp)  
(Representatives Amerman, Gulleason)**NONRESIDENT GOOSE HUNTING**

AN ACT to amend and reenact section 20.1-03-07.1 of the North Dakota Century Code, relating to nonresidents hunting geese in Richland and Sargent Counties during the early goose season.

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

**SECTION 1. AMENDMENT.** Section 20.1-03-07.1 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-03-07.1. (Effective through December 31, 2007) Nonresident waterfowl hunting license required.** Except as provided in sections 20.1-02-05, 20.1-03-07.2, and 20.1-03-07.3, a nonresident may not hunt waterfowl unless that individual first obtains a nonresident waterfowl hunting license. However, a nonresident may hunt cranes after first obtaining a nonresident waterfowl hunting license or a nonresident small game hunting license. Except as otherwise provided in this section, the nonresident waterfowl hunting license entitles the nonresident to hunt waterfowl for any period of fourteen consecutive days or any two periods of seven consecutive days each. A license authorizing the fourteen-day hunting period allows hunting in a specified waterfowl hunting zone. A license authorizing two 7-day hunting periods allows hunting in a specified zone during each period. Upon payment of the fee for a statewide nonresident waterfowl hunting license, a nonresident may hunt waterfowl in any zone. Forty dollars of the fee for a statewide nonresident waterfowl license must be used for the private land open to sportsmen program. The governor, in the governor's proclamation, shall specify various waterfowl hunting zones for which nonresident waterfowl hunting licenses will be available, and may specify the number of licenses which may be issued in each zone and the manner in which they are to be issued. A nonresident is entitled to purchase only one nonresident waterfowl hunting license per year. The fourteen-day and two 7-day hunting period restrictions do not apply to nonresidents hunting in Richland and Sargent Counties during the early September Canada goose season.

**(Effective after December 31, 2007) Nonresident waterfowl hunting license required.** Except as provided in sections 20.1-02-05, 20.1-03-07.2, and 20.1-03-07.3, a nonresident may not hunt waterfowl unless that individual first obtains a nonresident waterfowl hunting license. However, a nonresident may hunt cranes after first obtaining a nonresident waterfowl hunting license or a nonresident small game hunting license. Except as otherwise provided in this section, the nonresident waterfowl hunting license entitles the nonresident to hunt waterfowl for any period of fourteen consecutive days or any two periods of seven consecutive days each. A license authorizing the fourteen-day hunting period allows hunting in a specified waterfowl hunting zone. A license authorizing two 7-day hunting periods allows hunting in a specified zone during each period. Upon payment of the fee for a statewide nonresident waterfowl hunting license, a nonresident may hunt waterfowl in any zone. Forty dollars of the fee for a statewide nonresident waterfowl license must be used for the private land open to sportsmen program. The governor, in the governor's proclamation, shall specify various waterfowl hunting zones for which

nonresident waterfowl hunting licenses will be available, and may specify the number of licenses which may be issued in each zone and the manner in which they are to be issued. A nonresident is entitled to purchase only one nonresident waterfowl hunting license per year.

Approved March 5, 2007  
Filed March 6, 2007



**CHAPTER 219****SENATE BILL NO. 2059**

(Natural Resources Committee)

(At the request of the Game and Fish Department)

**PROTECTED WILDLIFE POSSESSION FEE  
ELIMINATION**

AN ACT to amend and reenact section 20.1-03-12 of the North Dakota Century Code, relating to fees for game and fish licenses and permits to propagate, domesticate, or possess protected wildlife.

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

**SECTION 1. AMENDMENT.** Section 20.1-03-12 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-03-12. Schedule of fees for licenses and permits.** The various license and permit fees are as follows:

1. For a resident, age sixteen and over, small game hunting license, six dollars.
2. For a nonresident small game hunting license, eighty-five dollars.
3. For a resident big game hunting license, twenty dollars, except the fee for a licensee under age sixteen is ten dollars, except as provided in a gubernatorial proclamation issued pursuant to section 20.1-08-04.1.
4. Except for a nonresident who participates on the same basis as a resident in a lottery for deer licenses remaining after the second lottery for residents under subsection 4 of section 20.1-03-11, for a nonresident big game hunting license, two hundred dollars, and for a nonresident bow license, two hundred dollars, and a nonrefundable five dollar application fee must accompany any lottery license fee under this subsection, except as provided in a gubernatorial proclamation issued pursuant to section 20.1-08-04.1. For a nonresident who participates on the same basis as a resident in a lottery for deer licenses remaining after the second lottery for residents, fifty dollars.
5. For a resident fur-bearer license, seven dollars.
6. For a resident fishing license, ten dollars, except that for a resident sixty-five years or over or a resident totally or permanently disabled, the license fee is three dollars.
7. For a nonresident fishing license, thirty-five dollars.
8. For a nonresident short-term seven-day fishing license, twenty dollars.
9. For a resident husband and wife fishing license, fourteen dollars.

10. For a nonresident nongame hunting license, fifteen dollars.
11. For a resident wild turkey permit, eight dollars.
12. For an annual general game license, three dollars.
13. ~~For a permit to propagate, domesticate, or possess protected wildlife, five dollars.~~
44. For a license to a nonresident buyer or shipper of green furs, or that person's agent, the amount that the nonresident buyer or shipper of green furs would pay for a nonresident buyer or shipper of green furs license or comparable license in that person's state of residence, or fifty dollars, whichever is greater.
- ~~45.~~ 14. For a license to a resident buyer or shipper of green furs, eight dollars for each place of business maintained by that person within this state.
- ~~46.~~ 15. For a license to a resident traveling agent, buyer, or shipper of green furs, twenty dollars.
- ~~47.~~ 16. For an annual license to practice taxidermy, twenty-five dollars.
- ~~48.~~ 17. For a permit to ship, by a person having a resident hunting license, during the respective open seasons, not to exceed in any one season twenty-five game birds, to points within this state other than that person's home or to points outside this state, three dollars.
- ~~49.~~ 18. For a permit to make collections of protected birds and animals for scientific purposes, ten dollars.
- ~~20.~~ 19. For a motorboat certificate of number and license: Each motorboat under sixteen feet [4.88 meters] in length, and all canoes, regardless of length, powered by a motor, twelve dollars. Each motorboat sixteen feet [4.88 meters] in length and over but shorter than twenty feet [6.1 meters] in length, excluding canoes, twenty-four dollars. Each motorboat twenty feet [6.1 meters] in length or over excluding canoes, thirty-three dollars.
- ~~24.~~ 20. To operate watercraft used for hire, the following license fees apply for three years:
  - Class 1. Each craft capable of carrying two adults of average weight, six dollars.
  - Class 2. Each craft capable of carrying three adults of average weight, six dollars.
  - Class 3. Each craft capable of carrying four adults of average weight, six dollars.
  - Class 4. Each craft capable of carrying five adults of average weight, six dollars.
  - Class 5. Each craft capable of carrying up to eight adults of average weight, nine dollars.

- Class 6. Each craft capable of carrying up to ten adults of average weight, twelve dollars.
- Class 7. Each craft capable of carrying up to fifteen adults of average weight, twenty-four dollars.
- Class 8. Each craft capable of carrying sixteen or more adults of average weight, thirty dollars.

- ~~22.~~ 21. For the taking of undesirable fish from the waters of this state pursuant to section 20.1-06-05, fifteen dollars for each hoop-net or trap, and fifteen dollars for each seine of fifty feet [15.24 meters] or any fraction thereof.
- ~~23.~~ 22. For a resident paddlefish tag annual license, three dollars per tag.
- ~~24.~~ 23. For a nonresident paddlefish tag annual license, seven dollars and fifty cents per tag.
- ~~25.~~ 24. For an annual resident license to sell minnows or other live bait at wholesale, fifty dollars.
- ~~26.~~ 25. For an annual license to sell minnows or other live bait at retail, fifteen dollars, except the fee is seventy-five dollars if white suckers are sold.
- ~~27.~~ 26. For an annual license to operate a private fish hatchery, seventy-five dollars.
- ~~28.~~ 27. For a resident commercial frog license, fifty dollars.
- ~~29.~~ 28. For a nonresident commercial frog license, two hundred dollars.
- ~~30.~~ 29. For a resident frog license, three dollars.
- ~~34.~~ 30. For a resident husband and wife frog license, five dollars.
- ~~32.~~ 31. For a shooting preserve operating permit, one hundred dollars, plus thirty cents per acre [.40 hectare] for each acre [.40 hectare].
- ~~33.~~ 32. For a nonresident waterfowl hunting license, eighty-five dollars.
- ~~34.~~ 33. For a nonresident husband and wife fishing license, forty-five dollars.
- ~~35.~~ 34. For a nonresident short-term three-day fishing license, fifteen dollars.
- ~~36.~~ 35. For a nonresident fur-bearer and nongame hunting license, twenty-five dollars.
- ~~37.~~ 36. For a combination license, thirty-two dollars.
- ~~38.~~ 37. For a white-tailed deer license sold to certified guides or outfitters and provided by them to nonresidents, two hundred fifty dollars.
- ~~39.~~ 38. For a resident swan license, five dollars.
- ~~40.~~ 39. For a nonresident swan license, twenty-five dollars.

- ~~41.~~ 40. For a resident and nonresident sandhill crane license, five dollars.
- ~~42.~~ 41. For a resident commercial clam license, one hundred dollars.
- ~~43.~~ 42. For a nonresident commercial clam license, one thousand dollars.
- ~~44.~~ 43. For a commercial clam dealer's permit, two thousand dollars. In addition, the applicant shall submit to the director a surety bond in the sum of two thousand dollars.
- ~~45.~~ 44. For an annual class B nonresident license to sell minnows or other live bait at wholesale, two hundred fifty dollars.
- ~~46.~~ 45. For a bighorn sheep license issued to a nonresident, five hundred dollars.
- ~~47.~~ 46. For a nonresident reciprocal trapping license, two hundred fifty dollars.
- ~~48.~~ 47. For a nonresident spring white goose license, fifty dollars.
- ~~49.~~ 48. For a resident certificate fee, one dollar, and for a nonresident certificate fee, two dollars. An agent may not charge a service fee for issuing a resident or nonresident certificate fee.
- ~~50.~~ 49. For a nonresident short-term ten-day fishing license, twenty-five dollars.
- ~~51.~~ 50. For a nonresident wild turkey permit, eighty dollars.
- ~~52.~~ 51. For a statewide nonresident waterfowl hunting license, one hundred twenty-five dollars.
- ~~53.~~ 52. For an annual class A nonresident license to sell minnows or other live bait at wholesale, five hundred dollars.

The fees for these licenses and permits must be deposited with the state treasurer and credited to the game and fish fund. Forty-five dollars of each nonresident big game hunting license fee must be used for the private land initiative.

Approved March 5, 2007

Filed March 6, 2007

**CHAPTER 220****HOUSE BILL NO. 1195**  
(Representatives Klemin, Porter, Wolf)  
(Senators Kilzer, Klein, O'Connell)**GAME AND FISH LICENSE IDENTIFICATION  
NUMBERS**

AN ACT to amend and reenact section 20.1-03-35 of the North Dakota Century Code, relating to use of identification numbers on game and fish licenses and permits; to provide an agency directive; and to provide a contingent effective date.

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

**SECTION 1. AMENDMENT.** Section 20.1-03-35 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-03-35. Social security number to be furnished.** The social security number of an applicant for any license or permit issued under this chapter must be recorded on the application unless the applicant is a foreign national to whom no social security number has been issued. A social security number recorded under this section is confidential. Beginning on January 1, 2008, any application that is printed in paper form for a resident or nonresident fishing, hunting, or fur-bearer certificate must be printed in a manner so that only the last four digits of the applicant's social security number are recorded on the application, and the first five digits of the applicant's social security number are not recorded on the application.

**SECTION 2. AGENCY DIRECTIVE.** The department of human services shall seek a federal exemption authorizing the state to require the recording of the last four digits of the applicant's social security number on applications in paper form for a resident or nonresident fishing, hunting, or fur-bearer certificate issued under chapter 20.1-03.

**SECTION 3. CONTINGENT EFFECTIVE DATE.** Section 1 of this Act becomes effective on the date the department of human services certifies to the game and fish department and the legislative council that the United States department of health and human services has granted the exemption requested in section 2 of this Act.

Approved April 10, 2007  
Filed April 11, 2007

**CHAPTER 221****SENATE BILL NO. 2250**

(Senators Heitkamp, Freborg)

(Representative S. Meyer)

**YOUTH TURKEY HUNTING LICENSES**

AN ACT to amend and reenact section 20.1-04-07 of the North Dakota Century Code, relating to youth spring wild turkey hunting licenses.

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

<sup>129</sup> **SECTION 1. AMENDMENT.** Section 20.1-04-07 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-04-07. Governor's proclamation concerning the taking of wild turkeys - Youth spring wild turkey licenses.** ~~The~~ By proclamation the governor may, by proclamation, provide for a permit season to take wild turkeys in the manner, number, places, and times deemed in the state's best interests. By proclamation the governor also may allow individuals who are first-time youth spring wild turkey hunters to receive one spring wild turkey license valid for the regular spring wild turkey season. To be eligible to receive a spring wild turkey license, an individual must be fifteen years of age or younger on the opening day of the spring wild turkey season and have never received a spring wild turkey license. The governor shall make available to residents and nonresidents any permits remaining after the resident fall drawing.

Approved March 12, 2007

Filed March 13, 2007

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<sup>129</sup> Section 20.1-04-07 was also amended by section 1 of Senate Bill No. 2251, chapter 222.

**CHAPTER 222****SENATE BILL NO. 2251**

(Senators Heitkamp, Freborg)  
(Representatives S. Meyer, Nelson)

**WILD TURKEY LICENSE RAFFLE AND AUCTION**

AN ACT to amend and reenact section 20.1-04-07 of the North Dakota Century Code, relating to a wild turkey hunting license raffle and auction.

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

<sup>130</sup> **SECTION 1. AMENDMENT.** Section 20.1-04-07 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-04-07. Governor's proclamation concerning the taking of wild turkeys - National wild turkey federation raffle.** ~~The~~ By proclamation the governor may, by proclamation, provide for a permit season to take wild turkeys in the manner, number, places, and times deemed in the state's best interests; however, by proclamation the governor may make available to the national wild turkey federation one license per year to hunt wild turkeys in the spring in the manner, places, and times as the governor prescribes. The national wild turkey federation shall hold a raffle or may auction to the highest bidder, whether resident or nonresident, a license to hunt wild turkeys. If an individual receives a wild turkey license through the raffle or the auction, the individual is not eligible to apply for a wild turkey license through the game and fish department that year. No more than ten percent of the gross proceeds of the raffle may be used to promote the raffle. Ten percent of the net proceeds of the raffle or auction may be retained by the local, state, or national wild turkey federation entity conducting the raffle or auction. All remaining net proceeds must be deposited in the national wild turkey federation superfund and used for wild turkey management and related projects in this state. The national wild turkey federation shall submit reports concerning the raffle or auction as the director requires. The governor shall make available to residents and nonresidents any permits remaining after the resident fall drawing.

Approved April 11, 2007

Filed April 13, 2007

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<sup>130</sup> Section 20.1-04-07 was also amended by section 1 of Senate Bill No. 2250, chapter 221.

**CHAPTER 223****HOUSE BILL NO. 1311**

(Representatives Headland, Dietrich, Weiler)  
(Senators Cook, Erbele, Wardner)

**YOUTH PHEASANT HUNTING SEASON**

AN ACT to amend and reenact section 20.1-04-15 of the North Dakota Century Code, relating to the youth pheasant hunting season; to provide for a game and fish department study; and to provide for a report to the legislative council.

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

**SECTION 1. AMENDMENT.** Section 20.1-04-15 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-04-15. (Effective through July 31, 2007) Pheasant season - Opening.** The open or lawful season on pheasant and the open or lawful season on duck may not commence on the same weekend. Except as otherwise provided in this section for the opening of pheasant season for youth, the open or lawful season on pheasant may not open earlier than one-half hour before sunrise and the season may not commence earlier than the first Saturday of October of any given year. The governor, in the governor's proclamation, may provide a pheasant hunting season for youth ages twelve through sixteen on the Saturday and Sunday preceding the opening of the regular pheasant season.

~~(Effective after July 31, 2007) Pheasant season - Opening.~~ The open or lawful season on pheasant and the open or lawful season on duck may not commence on the same weekend. The open or lawful season on pheasant may not open earlier than one-half hour before sunrise and the season may not commence earlier than the first Saturday of October of any given year.

**SECTION 2. GAME AND FISH DEPARTMENT STUDY - HUNTER SAFETY EDUCATION REQUIREMENTS - REPORT.** The game and fish department shall study, during the 2007-08 interim, hunter safety education requirements and hunter safety for all ages of hunters. The game and fish department shall report its findings and recommendations to the legislative council by July 1, 2008.

Approved April 26, 2007

Filed April 27, 2007



**CHAPTER 224****HOUSE BILL NO. 1289**

(Representatives Dietrich, Monson, Nottestad, Porter)  
(Senator Urlacher)

**BIGHORN SHEEP LICENSE RAFFLE OR AUCTION**

AN ACT to amend and reenact section 20.1-08-04.1 of the North Dakota Century Code, relating to a bighorn sheep license raffle or auction.

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

**SECTION 1. AMENDMENT.** Section 20.1-08-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-08-04.1. Governor's proclamation concerning the hunting of bighorn sheep - ~~License Minnesota-Wisconsin chapter of the foundation for North American wild sheep raffle or auction - Certain license recipients not eligible to apply again.~~** The governor may by proclamation provide for a season to hunt bighorn sheep in ~~such~~ the manner, number, places, and times as the governor prescribes. Licenses to hunt bighorn sheep must be issued by lottery; however, the governor may by proclamation ~~auction to the highest bidder, whether resident or nonresident,~~ make available to the Minnesota-Wisconsin chapter of the foundation for North American wild sheep a license to hunt bighorn sheep in ~~such~~ the manner, ~~number,~~ places, and times as the governor prescribes. Upon payment of the nonrefundable application fee required by section 20.1-03-12.2, a nonresident may participate in the ~~state~~ lottery. One license to hunt bighorn sheep may be issued to a nonresident participating in the ~~state~~ lottery. If a nonresident is issued a license to hunt bighorn sheep, no other nonresident may be issued a license to hunt bighorn sheep through the ~~state~~ lottery. If all of the licenses to hunt bighorn sheep made available through the ~~state~~ lottery are issued to residents, then a nonresident is not eligible to be issued a license to hunt bighorn sheep through the ~~state~~ lottery. ~~Each person who has received a license to hunt bighorn sheep is not eligible to apply for another bighorn sheep license.~~ The Minnesota-Wisconsin chapter of the foundation for North American wild sheep shall hold either a raffle or an auction under rules adopted by the director with residents and nonresidents eligible to participate. Ten percent of gross raffle proceeds may be retained by the Minnesota-Wisconsin chapter of the foundation for North American wild sheep and ninety percent of gross raffle proceeds must be remitted to the department. All auction proceeds must be remitted to the department. Individuals who receive a license through the raffle or auction may not transfer the license. Individuals may participate in the state lottery and the raffle or auction; however, individuals may not receive more than one license in any one year. An individual may only receive one license to hunt bighorn sheep through the state lottery in a lifetime. An individual who has been convicted of illegally taking a moose, elk, or bighorn sheep is not eligible to apply for or receive a license under this section.

Approved March 6, 2007

Filed March 7, 2007

**CHAPTER 225****SENATE BILL NO. 2201**

(Senators Heitkamp, Freborg, Lyson)  
(Representatives DeKrey, Hanson, Wall)

**ANTELOPE LICENSE RAFFLE**

AN ACT to create and enact a new section to chapter 20.1-08 of the North Dakota Century Code, relating to establishing a North Dakota hunter educators association antelope license raffle.

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

**SECTION 1.** A new section to chapter 20.1-08 of the North Dakota Century Code is created and enacted as follows:

**Governor's proclamation concerning the hunting of antelope - North Dakota hunter educators association raffle.** By proclamation, the governor may make available to the North Dakota hunter educators association one license per year to hunt antelope in the manner, places, and times as the governor prescribes. The North Dakota hunter educators association shall hold a raffle under rules adopted by the director. Only residents are eligible to participate. No more than ten percent of the gross proceeds of the raffle may be used to promote the raffle and all net proceeds of the raffle must be used for sponsoring mentored hunts for youth who may otherwise not have the means to go afield to hunt; establishing a statewide network of shooting locations for youth to become familiar with archery equipment and firearms under the supervision of a certified volunteer hunter education instructor; and purchasing advertising in news media during hunting season concerning firearms safety and hunting ethics and the promotion of safe and responsible hunting. If an individual receives an antelope license through the raffle, the individual is not eligible to apply for an antelope license through the game and fish department that year. The North Dakota hunter educators association shall submit reports concerning the raffle as the director requires.

Approved April 26, 2007

Filed April 27, 2007

**CHAPTER 226****HOUSE BILL NO. 1402**

(Representatives Wall, Dietrich, Kerzman, Williams)  
(Senators Anderson, Hacker)

**TERMINALLY ILL CHILDREN HUNTING  
OPPORTUNITIES**

AN ACT to create and enact a new subsection to section 20.1-02-05 and a new section to chapter 20.1-08 of the North Dakota Century Code, relating to authority of the game and fish director to issue hunting licenses to a nonprofit organization and to establish once-in-a-lifetime hunting opportunities for terminally ill children.

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

<sup>131</sup> **SECTION 1.** A new subsection to section 20.1-02-05 of the North Dakota Century Code is created and enacted as follows:

Issue free hunting licenses to an organization that sponsors hunting trips for terminally ill children. A license issued under this subsection may be used by an individual sponsored by the organization to hunt the species indicated on the license.

**SECTION 2.** A new section to chapter 20.1-08 of the North Dakota Century Code is created and enacted as follows:

**Governor's proclamation concerning once-in-a-lifetime big game hunts for terminally ill children - Rules.** By proclamation, the governor may make available annually to one organization up to eight deer licenses and four antelope licenses to hunt the species indicated on the license in the manner, places, and times as the governor prescribes. The organization shall make one license available to each qualified child to hunt the species of big game indicated on the license as provided in the governor's proclamation. A qualified child receiving a license under this section must comply with hunter education requirements and, if under the age of eighteen, must be accompanied by an adult twenty-one years of age or older. The director may adopt rules to implement this section. As used in this section, "organization" means a nonprofit organization qualified under Internal Revenue Code section 501(c)(3) with the principal purpose of granting hunting and fishing adventures for children who have been diagnosed with a terminal illness by a licensed physician and "qualified child" means a terminally ill individual who is of legal age to hunt the species for which the license is valid but under twenty-one years of age, is a resident, and is sponsored by an organization that provides to the department supporting documentation demonstrating compliance with this section.

Approved April 11, 2007

Filed April 13, 2007

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<sup>131</sup> Section 20.1-02-05 was also amended by section 11 of Senate Bill No. 2214, chapter 293.

**CHAPTER 227****SENATE BILL NO. 2058**

(Natural Resources Committee)

(At the request of the Game and Fish Department)

**GOLDEN LAKE LAND TRANSFER**

AN ACT to authorize the game and fish department to transfer land to adjacent landowners around Golden Lake.

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

**SECTION 1. TRANSFER OF LAND AUTHORIZED.** The game and fish department may convey by written document, executed by the governor and attested by the secretary of state, its interest, right, or title to the land described in this section to adjacent landowners around Golden Lake for the price and on the terms as determined by the department. The state shall reserve all mineral rights in and under the premises conveyed as are now held by the state.

The land to be conveyed is riparian land located within the southwest quarter of the southwest quarter and in government lots four and five of section eleven, township one hundred forty-seven north, range fifty-five west of the fifth principal meridian, Steele County, North Dakota.

The provisions of sections 54-01-05.2 and 54-01-05.5 do not apply to the transfer authorized by this Act.

Approved March 5, 2007

Filed March 9, 2007

# GOVERNMENTAL FINANCE

## CHAPTER 228

### SENATE BILL NO. 2049

(Judiciary Committee)

(At the request of the State Investment Board)

## INVESTMENT DIRECTOR CONTRACT EXECUTION

AN ACT to amend and reenact section 21-10-05 of the North Dakota Century Code, relating to the power of the investment director to sign and execute contracts and agreements relating to funds under the management of the state investment board.

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

**SECTION 1. AMENDMENT.** Section 21-10-05 of the North Dakota Century Code is amended and reenacted as follows:

**21-10-05. Investment director - Powers and duties.** Subject to the limitations contained in the law or the policymaking regulations or resolutions ~~promulgated~~ adopted by the board, the investment director ~~shall have the power~~ may sign and execute all contracts and agreements to make purchases, sales, exchanges, investments, and reinvestments ~~of relating to~~ the funds under the management of the board. This section ~~shall constitute~~ is a continuing appropriation of all moneys required for the making of investments of funds under the management of the board. The investment director shall see that moneys invested are at all times handled in the best interests of the funds. Securities or investments may be sold or exchanged for other securities or investments.

The investment director shall formulate and recommend to the investment board for approval, investment regulations or resolutions pertaining to the kind or nature of investments and limitations, conditions, and restrictions upon the methods, practices, or procedures for investment, reinvestment, purchase, sale, or exchange transactions ~~which that~~ should govern the investment of funds under this chapter.

Approved April 12, 2007

Filed April 13, 2007

# HEALTH AND SAFETY

## CHAPTER 229

### HOUSE BILL NO. 1290

(Representative Price)  
(Senator J. Lee)

#### STATE TRAUMA SYSTEM EVALUATION

AN ACT to provide for the state department of health to contract for an evaluation of the state trauma system; to provide for a legislative council report; and to provide an appropriation.

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

#### SECTION 1. STATE DEPARTMENT OF HEALTH - TRAUMA SYSTEM CONSULTATION - REPORT TO LEGISLATIVE COUNCIL.

1. During the 2007-08 interim, the state department of health shall contract with a professional organization to perform an evaluation of the trauma system in the state. In preparing the request for proposal and contract for the evaluation of the trauma system in the state, the department shall request the advice of and receive the consent of an advisory committee consisting of the executive director of the North Dakota emergency medical services association, the executive director of the North Dakota medical association, the president of the North Dakota healthcare association, and the senior policy director of the American heart association, North Dakota, or their designees. The contractor must be a professional organization that is national in scope and which has expertise and experience in evaluating state trauma systems and programs.
2. The evaluation of the state trauma system must include a comprehensive onsite review by a multidisciplinary team, a critical analysis of the current state trauma system, the state trauma system's interrelationship with the state's emergency management system and with homeland security all-hazard planning and program efforts, and recommendations for improvements and enhancements.
3. The state department of health shall provide necessary staffing and assistance to the contractor.
4. Before July 1, 2008, the state health officer shall report to the legislative council on the contractor's findings and recommendations resulting from the state trauma system evaluation and the state department of health's responses and proposed responses to these recommendations.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys from special funds the sum of \$75,000, or so much of the sum as may be necessary, from the health care trust fund and \$25,000, or so much of the sum as may be necessary, from gifts, grants, donations, and other special fund sources to the state department of health for the purpose of contracting for and assisting with an evaluation of the state trauma system under section 1 of this Act, for the biennium beginning July 1, 2007, and ending June 30, 2009.

Approved April 23, 2007  
Filed April 24, 2007

**CHAPTER 230****HOUSE BILL NO. 1435**

(Representative Price)

(Senator J. Lee)

**IMMUNIZATION PROGRAM AND TASK FORCE**

AN ACT to provide for an immunization program and immunization task force; to provide for reports to the legislative council; and to provide an appropriation.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:****SECTION 1. STATE DEPARTMENT OF HEALTH IMMUNIZATION PROGRAM.**

1. During the period beginning July 1, 2007, through December 31, 2007, the state department of health shall distribute vaccines purchased under section 3 of this Act to local public health units and other immunization providers for the purpose of continuing the immunization services previously funded through the immunization grant program authorized under section 317 of the federal Public Health Service Act, while transitioning to a provider choice immunization program.
2. During the period beginning January 1, 2008, through June 30, 2009, the state department of health may distribute vaccines purchased under section 3 of this Act to local public health units and other immunization providers for the purpose of continuing the transition to a provider choice immunization program. The department shall distribute the vaccines in accordance with the department's protocol established in consultation with the immunization task force.
3. The state department of health and local public health units shall attempt to access federal and third-party payer funds before using funds from the immunization program. If the funds appropriated to the state department of health for the 2007-09 biennium for the immunization program are insufficient, the state department of health shall request a transfer of spending authority from the state contingencies appropriation.

**SECTION 2. STATE DEPARTMENT OF HEALTH - IMMUNIZATION TASK FORCE - REPORTS TO LEGISLATIVE COUNCIL.**

1. The state health officer shall appoint an immunization task force to meet during the 2007-08 interim to establish a protocol on how to transition from a universal select immunization program to a provider choice immunization program and to recommend to the state department of health that this protocol be implemented. The protocol must seek to retain the state's high rates of vaccinations using the most cost-effective protocol.
2. The task force must consist of at least seven members, including at least three members representing local public health districts, three members representing private health care providers, and



representatives of the state department of health. The state health officer shall appoint the task force members representing local public health units from a list of names submitted by an organization representing public health administrators. The state health officer shall appoint the task force members representing private health care providers from a list of names submitted by the North Dakota medical association.

3. During the 2007-08 interim, the task force shall provide periodic reports to the legislative council regarding the impact of the immunization program transition on the local public health units. During the 2007-08 interim, the state health officer shall provide periodic reports to the legislative council regarding the fiscal impact of the immunization program transition.

**SECTION 3. APPROPRIATION - CONTINGENT APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$2,000,000, or so much of the sum as may be necessary, to the state department of health for the purpose of providing vaccines to public health units and other immunization providers, for the biennium beginning July 1, 2007, and ending June 30, 2009. Of the total amount appropriated, \$500,000 is only available if the department of health determines that vaccines need to be purchased after December 31, 2007, pursuant to section 1 of this Act.

Approved April 24, 2007  
Filed April 25, 2007

**CHAPTER 231****HOUSE BILL NO. 1434**

(Representatives Price, Svedjan)

(Senator J. Lee)

**HEPATITIS EDUCATION AND VACCINATION  
PROGRAM**

AN ACT to create and enact a new section to chapter 23-01 of the North Dakota Century Code, relating to a state department of health viral hepatitis education and vaccination program; and to provide an appropriation.

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

**SECTION 1.** A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

**Viral hepatitis program - Vaccination - Study.**

1. The state department of health shall establish and administer a viral hepatitis program with the goal of distributing to residents of the state who are at an increased risk for exposure to viral hepatitis information that addresses the higher incidence of hepatitis C exposure and infection among these populations, addresses the dangers presented by the disease, and provides contacts for additional information and referrals.
2. The department shall establish a list of classes of individuals by category that are at increased risk for viral hepatitis exposure. The list must be consistent with recommendations developed by the federal centers for disease control. The department shall determine the type of information the department will distribute under the program and the form and manner of distribution.
3. The department shall establish a vaccination and testing program, to be coordinated by the department through local public health units.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much of the sum as may be necessary, to the state department of health for the purpose of establishing a viral hepatitis program under section 1 of this Act, for the biennium beginning July 1, 2007, and ending June 30, 2009.

Approved April 9, 2007

Filed April 10, 2007

**CHAPTER 232****HOUSE BILL NO. 1471**

(Representatives Ekstrom, Hawken, Nottestad, Potter)  
(Senators Erbele, Heckaman)

**HUMAN PAPILLOMA VIRUS EDUCATION**

AN ACT to create and enact a new section to chapter 23-01 of the North Dakota Century Code, relating to state department of health programs to educate about the human papilloma virus; and to provide an appropriation.

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

**SECTION 1.** A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

**Human papilloma virus - Information.** The state department of health shall educate the public about the human papilloma virus and the availability of a human papilloma virus vaccine; promote immunization against the human papilloma virus; and distribute informational materials regarding the human papilloma virus and the human papilloma virus vaccine. The department shall distribute the informational material through relevant department programs and divisions, including breast and cervical cancer control programs; immunization programs; family planning programs; and human immunodeficiency virus and sexually transmitted disease programs. Informational materials distributed must include the recommendations of the advisory committee on immunization practices of the federal centers for disease control and prevention; contain information relevant to the target populations of each of the participating programs and divisions distributing the informational materials; and contain information regarding the availability of the vaccine through the vaccines for children program operated by the department under 42 U.S.C. 1396s, and the medical assistance program.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$50,000, or so much of the sum as may be necessary, to the state department of health for the purpose of providing human papilloma virus education under section 1 of this Act, for the biennium beginning July 1, 2007, and ending June 30, 2009.

Approved March 28, 2007  
Filed March 28, 2007

**CHAPTER 233****HOUSE BILL NO. 1505**

(Representatives Ruby, Bellew, Price)

(Senators Erbele, Warner)

**TATTOOING AND BODY PIERCING REGULATION**

AN ACT to create and enact a new section to chapter 23-01 of the North Dakota Century Code, relating to the regulation of tattooing, body piercing, branding, subdermal implants, and scarification.

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

<sup>132</sup> **SECTION 1.** A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

**Tattooing, body piercing, branding, subdermal implants, and scarification - Permit - Fee - Adoption of rules.**

1. A person may not operate a facility providing tattooing, body piercing, branding, subdermal implant, and scarification services without a permit issued by the department under this section. The holder of a permit shall display the permit in a conspicuous place at the facility for which the permit is issued. A permit issued under this section expires annually. An applicant for a permit shall submit an application for a permit to the department, on a form provided by the department, with a permit fee established by the department. The application must include the name and complete mailing address and street address of the facility and any other information reasonably required by the department for the administration of this section.
2. The health council shall adopt rules to regulate any person that receives compensation for engaging in the practice of tattooing, body piercing, branding, subdermal implants, or scarification. The rules must establish health and safety requirements and limitations with respect to the age of an individual who may receive a tattoo, body piercing, or scarification and may prohibit any practice that the health council deems unsafe or a threat to public health.
3. The fees established by the department must be based on the cost of conducting routine and complaint inspections and enforcement actions and preparing and sending license renewals. Fees collected under this section must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to

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<sup>132</sup> Section 23-01-35 was amended by section 2 of Senate Bill No. 2352, chapter 133.

appropriation by the legislative assembly. The department shall waive all or a portion of the fee for any facility that is subject to local jurisdiction.

Approved April 11, 2007  
Filed April 13, 2007

**CHAPTER 234****HOUSE BILL NO. 1129**

(Human Services Committee)

(At the request of the State Department of Health)

**ELECTRONIC BIRTH, MARRIAGE, AND DEATH  
RECORDS**

AN ACT to create and enact a new section to chapter 23-02.1 of the North Dakota Century Code, relating to electronic birth, marriage, fetal death, and death records and electronic filing and registration for birth, fetal death, and death records; to amend and reenact sections 23-02.1-01, 23-02.1-05, 23-02.1-08, 23-02.1-11, 23-02.1-12, 23-02.1-13, 23-02.1-14, 23-02.1-15, and 23-02.1-16, subsection 1 of section 23-02.1-17, sections 23-02.1-18, 23-02.1-19, and 23-02.1-20, subsection 2 of section 23-02.1-21, section 23-02.1-22, subsection 2 of section 23-02.1-23, sections 23-02.1-25, 23-02.1-26, 23-02.1-27, 23-02.1-28, 23-02.1-29, and 23-02.1-30, subsection 1 of section 23-02.1-32, and sections 23-06-07, 23-06-08, 23-06-09, and 23-06-10 of the North Dakota Century Code, relating to birth, marriage, and death records; to repeal sections 23-02.1-06, 23-02.1-07, 23-02.1-09, and 23-02.1-10 of the North Dakota Century Code, relating to registration districts and local registrars; to provide a penalty; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 23-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-01. Definitions.** As used in this chapter:

1. "Authorized representative" means a person who has the legal authority to act on behalf of the person named on a record, including a personal representative or guardian.
2. "Certified" means a copy of the original record on file with the state department of health that is signed and sealed by the state registrar or deputy state registrar.
3. "Dead body" means a lifeless human body or parts of such body or bones thereof from the state of which it may reasonably be concluded that death recently occurred.
4. "Electronic birth registration system" means the electronic birth registration system maintained by the state department of health.
5. "Electronic death registration system" means the electronic death registration system maintained by the state department of health.
6. "Facts of death" means the demographic and personal information pertaining to a person's death.

- ~~2-~~ 7. "Fetal death" or "birth resulting in stillbirth" means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy; the death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.
- ~~3-~~ 8. "Filing" means the presentation of a ~~certificate record~~, report, or other ~~record~~ information provided for in this chapter of a birth, death, fetal death, adoption, marriage, divorce, or other event as specified by the state health officer for registration by the state registrar.
- ~~4-~~ 9. "Final disposition" means the burial, interment, cremation, removal from the state, or other disposition of a dead body or fetus.
- ~~5-~~ 10. "Health statistics" means data derived from records of birth, death, fetal death, marriage, divorce, or other records relating to the health of the populace or the state of the environment.
- ~~6-~~ 11. "Institution" means any establishment, public or private, which provides inpatient medical, surgical, or diagnostic care or treatment, or nursing, custodial, or domiciliary care to two or more individuals unrelated by blood, or to which persons are committed by law.
- ~~7-~~ 12. "Live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which after such expulsion or extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.
13. "Medical certification" means the medical information pertaining to a person's death, including the cause and manner of death.
- ~~8-~~ 14. "Physician" means a person authorized or licensed to practice medicine or osteopathy pursuant to chapter 43-17.
- ~~9-~~ 15. "Registration" means the acceptance by the state registrar and incorporation into official records of ~~certificates~~, reports, or other records provided for in this chapter, of birth, death, fetal death, marriage, divorce, or other records as may be determined by the state health officer.
16. "Relative" means a person's current or surviving spouse, a parent or legal guardian, a child, a grandparent, or a grandchild. The state registrar may require proof of the relationship.
17. "Subregistrar" means a funeral director or other suitable person from a licensed funeral home who is appointed by the state registrar for the purpose of issuing burial-transit permits.
- ~~40-~~ 18. "System of health statistics tabulation and analysis" includes the tabulation, analysis, and presentation or publication of statistical data derived from health statistics.

- 44- 19. "System of vital records registration" includes the registration, collection, preservation, amendment, and certification of ~~records~~ of birth, death, fetal death, marriage, divorce, or other records as may be determined necessary by the state health officer or the state health officer's designee.

**SECTION 2.** A new section to chapter 23-02.1 of the North Dakota Century Code is created and enacted as follows:

**Birth, marriage, fetal death, and death records - Transition to electronic birth registration system and electronic death registration system.**

1. Beginning January 1, 2008, all new birth, fetal death, and death certificates must be filed with the state registrar and maintained as birth, fetal death, or death records. The state registrar shall issue certified copies of any birth, fetal death, or death record, or informational copies of death and marriage records, to those persons entitled to the record in accordance with this chapter.
2. A certified copy of a birth, marriage, fetal death, or death record is considered to meet the requirements of any law requiring a birth, marriage, fetal death, or death certificate.
3. All birth, marriage, fetal death, and death certificates created or issued before January 1, 2008, remain legally valid if the certificate was valid under prior law.
4. Any reference to a birth, marriage, fetal death, and death record includes any birth, marriage, fetal death, and death certificate issued before January 1, 2008.
5. Amendments to birth records issued before 2006 and fetal death, or death records issued before 2008 must be made according to the procedures and processes used at the time the original record was created.

**SECTION 3. AMENDMENT.** Section 23-02.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-05. Duties of the state registrar.**

1. The state registrar shall:
  - a. Direct and supervise the statewide system of vital records and registration and be the primary custodian of said records.
  - b. Direct, supervise, and control the activities of ~~local registrars~~ subregistrars and the activities of other local officials related to the operation of the vital records registration system.
  - c. Prescribe, with the approval of the state department of health, and distribute such forms as required by this chapter and the rules and regulations issued hereunder.



2. The deputy state registrar shall possess the powers of the state registrar during the registrar's absence, delegation, inability to act, or during the time there is a vacancy in the office.

**SECTION 4. AMENDMENT.** Section 23-02.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-08. Duties of subregistrars.** A subregistrar may receive death certificates and issue burial-transit permits for those registration districts counties served by the funeral home the subregistrar is employed by. The subregistrar shall note on each certificate over the subregistrar's signature the date upon which it was filed and shall forward the same to the local registrar file all completed burial-transit permits with the county recorder in the county where the final disposition took place within ~~twenty-one~~ ten days after death the date of interment or within the time prescribed by the local board of health. The subregistrar is subject to the supervision and control of the state registrar and may be removed by the state registrar for reasonable cause. The subregistrar is subject to the same penalties for neglect of duties as is the local registrar provided in section 23-02.1-32.

**SECTION 5. AMENDMENT.** Section 23-02.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-11. Form of certificates records.** The form of the certificates records, reports, and other returns information required by this chapter is subject to the approval of and modification by the state department of health. In order to maintain uniformity in the system of vital records registration and the system of health statistics tabulation and analysis, substantial efforts should be made to ensure that information collected parallels that collected by other primary registration areas.

**SECTION 6. AMENDMENT.** Section 23-02.1-12 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-12. Date of registration.** Each certificate record, report, and other form information required to be filed under this chapter must have entered upon its face the date of registration duly attested.

**SECTION 7. AMENDMENT.** Section 23-02.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-13. Birth registration.**

1. A certificate of birth record for each live birth that occurs in this state must be filed with the state registrar.
2. When a birth occurs in an institution, the person in charge of the institution or a designated representative shall obtain the personal data, prepare the certificate, secure the signatures required by the certificate, and file it with the state registrar. The physician in attendance shall certify to the facts of birth and provide the medical information required by the certificate within six days after the birth must use the state department of health's electronic birth registration system to report the birth, including all personal and medical facts, to the state registrar within five days after the birth.

3. When a birth occurs outside an institution, the ~~certificate~~ required forms must be prepared and filed with the state registrar by one of the following in the indicated order of priority:
  - a. The physician in attendance at or immediately after the birth, or in the absence of such a person;
  - b. Any other person in attendance at or immediately after the birth, or in the absence of such a person; or
  - c. The father, the mother, or in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred.
4. If a man and the mother are or have been married or have attempted to marry each other in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the child is born during the marriage or attempted marriage, or within three hundred days after the termination of cohabitation or after the marriage or attempted marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court, the name of the man must be entered on the ~~certificate~~ record as the father of the child unless the presumption of paternity has been rebutted by a court decree.
5. If the child is not born during the marriage of the mother, or within three hundred days after a marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court, the name of the father may not be entered on the birth ~~certificate~~ record unless:
  - a. After the child's birth, the father and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:
    - (1) He has acknowledged his paternity of the child in writing filed with the state registrar; or
    - (2) ~~With his consent, he is named as the child's father on the child's birth certificate; or~~
    - (3) He is obligated to support the child under a written voluntary promise or by court order;
  - b. After the child's birth, the child's natural mother and the father voluntarily acknowledge the child's paternity in a writing signed by both and filed with the state registrar; or
  - c. A court or other entity of competent jurisdiction has adjudicated paternity.
6. If, in accordance with subsections 4 and 5, the name of the father of the child is not entered on the ~~certificate of birth~~ record, the child's surname must be shown on the birth ~~certificate~~ record as the current legal surname of the mother at the time of birth unless an affidavit or an

acknowledgment of paternity signed by both parents is received stating the surname to be that of the father.

**SECTION 8. AMENDMENT.** Section 23-02.1-14 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-14. Infants of unknown parentage - Foundling registration.**

1. Whoever assumes custody of a living infant of unknown parentage shall report using the electronic birth registration system or on a form and in the manner prescribed by the state registrar within seven days to the state registrar the following information:
  - a. The date and place of finding.
  - b. Sex, color, or race, and approximate age of child and approximate date of birth.
  - c. Name and address of the persons or institution with whom the child has been placed for care.
  - d. Name given to the child by the custodian.
  - e. Other data required by the state registrar.
2. The place where the child was found must be entered as the place of birth and the date of birth must be determined by approximation.
3. A report registered under this section constitutes the ~~certificate of birth~~ record for the infant.
4. If the child is identified and a ~~certificate of birth~~ record is found or obtained, any report registered under this section must be sealed and filed and may be opened only by order of a court of competent jurisdiction or as provided by regulation.

**SECTION 9. AMENDMENT.** Section 23-02.1-15 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-15. Delayed registration of birth.**

1. When the birth of a person born in this state has not been registered, a ~~certificate~~ record may be filed in accordance with the regulations of the state department of health. Such ~~certificate~~ record must be registered subject to such evidentiary requirements as the state department of health shall prescribe to substantiate the alleged facts of birth.
2. ~~Certificates~~ Records of birth registered one year or more after the date of occurrence must be marked "delayed" and show on their face the date of delayed registration.
3. A summary statement of the evidence submitted in support of the delayed registration must be endorsed on the ~~certificate~~ record.
4. a. When an applicant does not submit the minimum documentation required in the regulations for delayed registration or when the

state registrar finds reason to question the validity or adequacy of the ~~certificate record~~ or documentary evidence, the state registrar may not register the delayed ~~certificate record~~ and shall advise the applicant of the reasons for this action. In the event that the deficiencies are not corrected, the state registrar shall advise the applicant of the right of appeal to a court of competent jurisdiction for a judicial determination of the birth facts.

- b. The state department of health may by regulation provide for the dismissal of an application which is more than two years old and is not ~~being actively prosecuted~~ pursued.

**SECTION 10. AMENDMENT.** Section 23-02.1-16 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-16. Delayed registration of death.** When a death occurring in this state has not been registered within the time period specified in section 23-02.1-19, a ~~certificate record~~ may be filed in accordance with regulations of the state department of health.

1. Such ~~certificates records~~ must be registered subject to such evidentiary requirements as the state department of health ~~shall~~ may by regulation prescribe to substantiate the alleged facts of death.
2. ~~Certificates Records~~ of death registered one year or more after the date of occurrence must be marked "delayed" and must show on their face the date of delayed registration.

**SECTION 11. AMENDMENT.** Subsection 1 of section 23-02.1-17 of the North Dakota Century Code is amended and reenacted as follows:

1. For each adoption decreed by any court in this state, the court shall require the preparation of a report of adoption on a form prescribed and furnished by the state registrar. The report must include such facts as are necessary to locate and identify the ~~certificate of birth record~~ for the person adopted; provide information necessary to establish a new ~~certificate of birth record~~ for the person adopted; and must identify the order of adoption and be certified by the clerk of court.

**SECTION 12. AMENDMENT.** Section 23-02.1-18 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-18. New ~~certificates of birth records~~ following adoption, legitimation, and paternity determination.**

1. The state registrar shall establish a new ~~certificate of birth record~~ for a person born in this state when the registrar receives the following:
  - a. An adoption report as provided in section 23-02.1-17 or a certified copy of the decree of adoption together with the information necessary to identify the original ~~certificate of birth record~~ and to establish a new ~~certificate of birth record~~; except that a new ~~certificate of birth record~~ may not be established if so requested by the court decreeing the adoption, the adoptive parents, or the adoptive person.

- b. A request that a new ~~certificate~~ record be established and such evidence as required by rules and regulations proving that such person has been legitimated or that a court of competent jurisdiction has determined the paternity of such person.
2. For a person born in a foreign country whose adoptive parents are residents of the state of North Dakota at the time of the adoption, the state registrar shall prepare a new ~~certificate of birth~~ record:
  - a. In the case of a foreign-born person adopted in North Dakota, upon presentation of a report of adoption as required by section 23-02.1-17.
  - b. In the case of a foreign-born person adopted outside the state of North Dakota or outside the United States, or in the state of North Dakota prior to July 1, 1979, upon presentation of a certified copy of the adoption decree, and:
    - (1) A certified copy of the ~~certificate of birth~~ record of the adopted person; or
    - (2) An affidavit of an adoptive parent setting forth the true or probable date and place of birth and parentage of the adopted person.

Any ~~certificate~~ certification of a birth record issued under this subsection must be in the same form as other ~~certificates~~ certifications of birth records issued in this state except that it must state that it does not purport to be evidence of United States citizenship.

3. When a new ~~certificate of birth~~ record is established, the actual place and date of birth must be shown. The new ~~certificate of birth~~ record must be substituted for the original ~~certificate of birth~~ record:
  - a. Thereafter, the original ~~certificate of birth~~ record and the evidence of adoption, paternity, or legitimation is not subject to inspection except upon order of a court of competent jurisdiction or as provided by rules and regulations.
  - b. Upon receipt of a notice of annulment of adoption, the original ~~certificate of birth~~ record must be restored to its place in the files and the new ~~certificate of birth~~ record and evidence is not subject to inspection except upon order of a court of competent jurisdiction.
4. If no ~~certificate of birth~~ record is on file for the person for whom a new ~~certificate of birth~~ record is to be established under this section, an original ~~certificate of birth~~ record must be filed with the state registrar in accordance with the appropriate rules and regulations promulgated by the state department of health. The new ~~certificate~~ record is also to be prepared on the standard ~~certificate of birth form or the delayed birth certificate form~~ forms in use at the time of the adoption, legitimation, or paternity determination.
5. When a new ~~certificate of birth~~ record is established by the state registrar, all copies of the original ~~certificate of birth~~ record in the custody of any custodian of permanent local records in the state must

be sealed from inspection or forwarded to the state registrar, as the registrar directs.

**SECTION 13. AMENDMENT.** Section 23-02.1-19 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-19. Death registration.**

1. A death certificate for each death which occurs in this state must be filed with the local registrar of the district in which the death occurred within fifteen days after the death and must be registered by the registrar if it has been completed and filed in accordance with this section, provided:
  - a. That if the place of death is unknown, a death certificate must be filed in the registration district in which a dead body is found within fifteen days after the occurrence.
  - b. That if a death occurs on a moving conveyance, a death certificate must be filed in the registration district in which the dead body was first removed from the conveyance.
- ~~2.~~ Notwithstanding subsection 1, if the state registrar has implemented an automated system that allows each local registrar to produce certified copies of death certificates in the local registrar's offices within two working days of filing, death certificates must be filed with the state registrar.
- ~~3.~~ A death record for each death that occurs in this state must be filed with the state registrar in accordance with the rules and regulations set forth by the state department of health using the electronic death registration system. All registration and issuing of copies of death records will be completed by the state department of health.
- ~~2.~~ The funeral director who first assumes custody of a dead body shall file the death certificate. The funeral director shall obtain the personal data facts of death from the next of kin or the best qualified person or source available and must file the facts of death information using the electronic death registration system within three days after assuming custody of the dead body. The funeral director shall obtain the medical certification of cause of death from the person responsible for the medical certification.
4. ~~3.~~ The medical certification must be completed and signed filed using the electronic death registration system within fifteen days after death by the physician or nurse practitioner in charge of the patient's care for the illness or condition which resulted in death except when inquiry is required by the local health officer or coroner.
- ~~5.~~ ~~4.~~ When death occurred without medical attendance or when inquiry is required by the local health officer or coroner, the county coroner shall investigate the cause of death, and shall obtain medical information about the individual from the individual's medical records or last-known physician, and shall complete and sign file the medical certification within fifteen days after taking charge of the case using the electronic death registration system.

- 6- 5. If the cause of death cannot be determined within fifteen days after death, the medical certification may be filed after the prescribed period, in accordance with rules adopted by the state department of health. The attending physician, nurse practitioner, or coroner shall give the funeral director in custody of the body notice of the reason for the delay and final disposition may not be made until authorized by the attending physician, nurse practitioner, or coroner.
- 7- 6. When a death is presumed to have occurred within this state but the body cannot be located, a death ~~certificate~~ record may be prepared by the state registrar upon receipt of findings of a court of competent jurisdiction, including the ~~personal data facts of death~~ and medical ~~data~~ certification required to complete the death ~~certificate~~ record. The death ~~certificate~~ record must be marked "presumptive" and must show on its face the date of registration and must identify the court and the date of the decree.
- 8- 7. Each death ~~certificate~~ record must include the social security number of the decedent, if the information is available. A social security number included on a death ~~certificate~~ record is confidential and may be disclosed only to a relative or authorized representative of the individual named on the record or by an order of a court of competent jurisdiction.

**SECTION 14. AMENDMENT.** Section 23-02.1-20 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-20. Fetal death registration.**

1. A fetal death ~~certificate~~ record for each fetal death which occurs in this state after a gestation period of twenty completed weeks or more or of less than twenty completed weeks of gestation when provided by rules of the state department of health must be filed with the state registrar.
2. The funeral director who first assumes custody of a fetus shall file the fetal death ~~certificate~~ record. In the absence of such a person, the physician or other person in attendance at or after delivery shall file the ~~certificate of fetal death~~ record. The person filing the ~~certificate of fetal death~~ record shall obtain the ~~personal data facts of death~~ from the next of kin or the best qualified person or source available and must file the facts of death information within fifteen days of the occurrence using the electronic death registration system. The person filing the ~~certificate of fetal death~~ record shall obtain the medical certification of ~~cause of death~~ from the person responsible for the medical certification.
3. The medical certification must be completed and ~~signed~~ filed using the electronic death registration system by the physician or a nurse practitioner in attendance at the delivery within fifteen days after the delivery except when inquiry is required by the local health officer or coroner.
4. When inquiry is required by the local health officer or coroner or in the absence of medical attendance, the county coroner shall investigate the cause of fetal death, and shall obtain medical information about the individual from that individual's medical records or last-known physician and sign file the medical certification within fifteen days after taking charge of the case using the electronic death registration system.

5. If the cause of fetal death cannot be determined within fifteen days after death, the medical certification may be filed after the prescribed period of time in accordance with rules adopted by the state department of health. The attending physician, nurse practitioner, or coroner shall give the funeral director in custody of the fetus the notice of the reason for the delay and final disposition may not be made until authorized by the attending physician, nurse practitioner, or coroner.
6. The provision for entering the name of the father of the fetus on the fetal death ~~certificate~~ record and the reporting of out-of-wedlock fetal deaths concur exactly with those set forth in section 23-02.1-13.

**SECTION 15. AMENDMENT.** Subsection 2 of section 23-02.1-21 of the North Dakota Century Code is amended and reenacted as follows:

2. The burial-transit permits must be issued by the state registrar or ~~the local registrar or a subregistrar of the district where the certificate of death or fetal death will~~ and must be filed in the office of the county recorder where the final disposition occurs in accordance with the requirements of sections 23-02.1-19 and 23-02.1-20.

**SECTION 16. AMENDMENT.** Section 23-02.1-22 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-22. Extension of time.**

1. The state department of health may, by regulation and upon such conditions as it may prescribe to assure compliance with the purposes of this chapter, provide for the extension of the periods of time prescribed in sections 23-02.1-19, 23-02.1-20, and 23-02.1-21 for the filing of death ~~certificates~~ records, fetal death ~~certificates~~ records, medical certification of ~~cause of death~~, and for the obtaining of burial-transit permits in cases in which compliance with the applicable prescribed period would result in undue hardship.
2. Regulations of the state department of health may provide for the issuance of a burial-transit permit under section 23-02.1-21 prior to the filing of a ~~certificate~~ record of death or fetal death upon conditions designed to assure compliance with the purposes of this chapter in cases in which compliance with the requirement that the ~~certificates~~ records be filed prior to the issuance of the permit would result in undue hardship.

**SECTION 17. AMENDMENT.** Subsection 2 of section 23-02.1-23 of the North Dakota Century Code is amended and reenacted as follows:

2. The officer who issues the marriage license shall prepare the ~~certificate~~ record on the form prescribed and furnished by the state registrar upon the basis of information obtained from the parties to be married, who shall attest to information by their signatures.

**SECTION 18. AMENDMENT.** Section 23-02.1-25 of the North Dakota Century Code is amended and reenacted as follows:



**23-02.1-25. Correction and amendment of vital records.**

1. A ~~certificate or~~ record registered under this chapter may be amended only in accordance with this chapter and regulations thereunder adopted by the state department of health to protect the integrity and accuracy of vital records.
2. A ~~certificate record~~ that is amended under this section must be marked "amended" except as provided in subsection 4. The date of amendment and a summary description of the evidence submitted in support of the amendment must be endorsed on or made a part of the record. The state department of health shall prescribe by regulation the conditions under which additions or minor corrections may be made to birth ~~certificates records~~ within one year after the date of birth without the ~~certificate record~~ being considered as amended.
3. Upon receipt of a certified copy of a court order changing the name of a person born in this state and upon request of such person or the person's parent, guardian, or legal representative, the state registrar shall amend the ~~certificate record~~ to reflect the new name.
4. Upon receipt of a sworn acknowledgment of paternity of a child born out of wedlock signed by both parents and upon request, the state registrar shall amend a ~~certificate record~~ of birth to show such paternity if paternity is not shown on the ~~certificate record~~. Upon request of the parents, the surname of the child must be changed on the appropriate ~~certificate record~~ to that of the father. Such ~~certificates record~~ may not be marked as "amended". The provisions of this subsection apply also in their entirety to ~~certificates records~~ of fetal death.

**SECTION 19. AMENDMENT.** Section 23-02.1-26 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-26. Reproduction of records.** To preserve original documents, the state registrar is authorized to prepare typewritten, photographic, electronic, or other reproductions of original records and files in the state registrar's office. ~~Such~~ These reproductions when certified by the state registrar must be accepted as the original record.

**SECTION 20. AMENDMENT.** Section 23-02.1-27 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-27. Disclosure of records.** Birth, death and fetal death records, filings, data, or other information related to birth, death, and fetal death records are confidential and may not be disclosed except as authorized under this chapter. The state registrar, and local registrars, may supervise and regulate physical shall restrict access to all vital records to protect vital records from loss, mutilation, or destruction and to prevent improper disclosure of the information contained in these records that are confidential. Information relating to the birth or fetal death of a child to a woman who was not married to the child's father when the child was conceived or born may be disclosed only to the child's guardian, to the individual to whom the record relates if that individual is at least eighteen years old, to the parent of the child, or upon order of a court of competent jurisdiction. Information in vital records indicating cause of death may not be disclosed except to a relative or personal representative of the deceased, to the attorney or the agent of a relative or personal representative of the

deceased, to the child fatality review panel, or upon order of a court of competent jurisdiction. An individual's social security number contained in vital records may not be disclosed except to the individual to whom it pertains, that individual's lawful agent or guardian, or by order of a court. Only a certified copy of a certificate or record may be provided to the public except as authorized under this chapter.

1. A certified copy of a birth record may be issued to the individual named on the record if that individual is at least sixteen years old, to a parent named on the record, to an authorized representative, or by the order of a court of competent jurisdiction. If the individual named on a birth record is deceased, a certified copy of that record may also be issued to a relative. If the date of birth on any birth record is more than one hundred years old, that record is an open record and a certified copy may be issued to anyone, except that adoption records remain confidential.
2. A certified copy of a death record may be issued to a relative, an authorized representative, the child fatality review board, or a funeral director reporting the facts of death, or by the order of a court of competent jurisdiction and may include the cause of death and the social security number. A certified copy of a death record that includes the facts of death and the social security number may be issued to any person that may obtain a certified copy of a death record or to any licensed attorney who requires the copy for a bona fide legal determination. A certified informational copy of a death record may be issued to the general public, but the copy may not contain the cause of death or the social security number.
3. A certified copy of a fetal death record may be issued to a parent named on the record, an authorized representative, or by the order of a court of competent jurisdiction. A person authorized to receive a certified copy of a fetal death record may request the certified copy be issued in the form of a certification of birth resulting in stillbirth.
4. A noncertified informational copy of a marriage record may be issued to the general public.
5. Any individual authorized to receive a certified copy of any specific record may grant another individual the same authority by completing a written authorization on a form prescribed by the state department of health.
6. The state department of health may grant limited access to birth and death information to the department of human services necessary for the purpose of completing its official duties.

**SECTION 21. AMENDMENT.** Section 23-02.1-28 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-28. Copies of data from vital records.** In accordance with section 23-02.1-27 and the regulations adopted pursuant thereto:

1. The state registrar shall, upon request of a person entitled to a copy under section 23-02.1-27, issue a certified copy of any ~~certificate or record or part of a record~~ in the registrar's custody ~~or a part thereof~~. Each copy issued must show the date of registration; and copies issued

from records marked "delayed", "amended", or "court order" must be similarly marked and show the effective date of filing.

2. A certified copy of a certificate record or any part ~~thereof~~ of the record issued in accordance with subsection 1 must be considered evidence of the facts of birth stated ~~therein~~ in the record, provided that the evidentiary value of a ~~certificate or~~ record filed more than one year after the event, or a record which has been amended, must be determined by the judicial or administrative body or official before whom the ~~certificate record~~ record is offered as evidence.
3. Data or copies may be furnished for statistical purposes to federal, state, local, or other public or private agencies, including the federal agency responsible for national vital statistics, upon such terms and conditions as may be prescribed by the state department of health through rules and regulations adopted pursuant to this chapter.
4. No person may prepare or issue any certificate or record which purports to be an original, certified copy, or copy of a certificate or record of birth, death, or fetal death, except as provided in this chapter, or regulations adopted ~~hereunder~~ under this chapter.
5. A certified copy may not disclose an individual's social security number unless the copy is being provided to the individual to whom it pertains, that individual's lawful agent or guardian a relative or authorized representative, or by order of a court of competent jurisdiction.

**SECTION 22. AMENDMENT.** Section 23-02.1-29 of the North Dakota Century Code is amended and reenacted 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 record~~ record.
  - c. Each filing of a new ~~certificate record~~ record of birth or fetal death following adoption, legitimation, or determination of paternity.
  - d. Each filing of a delayed ~~certificate record~~ record of birth or death except as provided for in subsection 4 of section 23-02.1-18.
  - e. Each filing of an amendment to a birth or death ~~certificate record~~ record.
  - f. A search of the files or records when no copy is made.
  - g. A noncertified informational copy of a death or marriage record.

The fee for each additional copy of the same document, requested at the same time, may not exceed two dollars.

2. Except as otherwise provided in subsection 3, fees collected under this section by the state registrar must 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 has been duly authorized, by the state registrar, to prepare and issue certified copies of death certificates or fetal death certificates, said local registrar is 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 must 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 record~~. This additional fee must be paid to the state registrar prior to the issuance of each certified copy of a birth ~~certificate record~~. The state registrar shall quarterly pay the additional fees collected pursuant to this subsection into the children's trust fund created by section 50-27-01.

**SECTION 23. AMENDMENT.** Section 23-02.1-30 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-30. Persons required to keep records.**

1. Every person in charge of an institution as defined in this chapter shall keep a record of personal particulars and data concerning each person admitted or confined to such institution. This record must include ~~such~~ all information as required by the standard ~~certificate record~~ of birth, death, and fetal death forms issued under the provisions of this chapter. The record must be made at the time of admission from information provided by such person, but when it cannot be obtained from ~~said~~ that person, the ~~same information~~ must be obtained from relatives or other persons acquainted with the facts. The name and address of the person providing the information must be a part of the record.
2. When a dead body or fetus is released or disposed of by an institution, the person in charge of the institution shall keep a record showing the name of the deceased, date of death, name and address of the person to whom the body is released, date of removal from the institution, or if finally disposed of by the institution, the date, place, and manner of disposition must be recorded.
3. A funeral director, embalmer, or other person who removed from the place of death or transports or finally disposes of a dead body or fetus, in addition to filing any ~~certificate record~~ or other form required by this chapter, shall keep a record which must identify the body, and ~~such~~ the information pertaining to receipt, removal, and delivery of ~~such~~ the body as may be prescribed in regulations adopted by the state department of health.
4. Records maintained under this section must be made available to the state registrar or the registrar's representative for inspection upon demand.

5. On or before the fifth day of each month, each funeral director, embalmer, or person acting as such in this state shall report to the state registrar, on forms provided for this purpose, information required by the state registrar regarding each dead body or fetus handled by such person during the preceding calendar month.

**SECTION 24. AMENDMENT.** Subsection 1 of section 23-02.1-32 of the North Dakota Century Code is amended and reenacted as follows:

1. a. Any person who willfully and knowingly makes any false statement in a report, record, or certificate required to be filed under this chapter, or in application for an amendment thereof, or who willfully and knowingly supplies false information intending that such information be used in the preparation of any such report, record, or certificate, or amendment thereof;
- b. Any person who, without lawful authority and with the intent to deceive, makes, alters, or mutilates any report, record, or certificate required to be filed under this chapter or a certified copy of ~~such a~~ report, record, or certificate;
- c. Any person who willfully and knowingly uses or attempts to use or to furnish to another for use, for any purpose of deception, any certificate, record, report, or certified copy thereof so made, altered, amended, or mutilated;
- d. Any person who, with the intention to deceive, willfully uses or attempts to use any certificate of birth or certified copy of a record of birth knowing that such certificate or certified copy was issued upon a record which is false in whole or in part or which relates to the birth of another person; ~~or~~
- e. Any person who willfully and knowingly furnishes a certificate of birth or certified copy of a record of birth with the intention that it be used by a person other than the person to whom the record of birth relates; or
- f. Any person who knowingly prepares, delivers, or uses a fraudulent or forged copy of a vital record;

is guilty of a class A ~~misdemeanor~~ C felony.

**SECTION 25. AMENDMENT.** Section 23-06-07 of the North Dakota Century Code is amended and reenacted as follows:

**23-06-07. Regulation of burial - Issuance of burial-transit permit regulated.** The body of any person whose death occurs in this state may not be interred, deposited in a vault or tomb, cremated, or otherwise disposed of, until a burial-transit permit has been properly issued by ~~the registrar of vital statistics of the registration district in which the death occurred~~ a subregistrar. A burial-transit permit may not be issued by any ~~registrar~~ subregistrar until a complete and satisfactory certificate and return of the death has been filed with the state registrar. If the certificate is incorrect or incomplete, the ~~registrar shall call attention to the defect and withhold issuing~~ subregistrar may not issue the permit until ~~the same~~ it is corrected or completed. In the case of any death outside of this state, a burial-transit permit issued in accordance with the law and the health regulations in force in the state

where the death occurred, when accompanying a body shipped through or into this state, may be accepted with the same effect as a permit from a ~~local registrar~~ ~~subregistrar~~. If the death occurred from some disease that is held to be communicable by the state department of health, the ~~registrar~~ ~~subregistrar~~ shall refuse to ~~grant~~ issue a permit for the removal or other disposition of the body except under the conditions prescribed by the state department of health and the local board of health.

**SECTION 26. AMENDMENT.** Section 23-06-08 of the North Dakota Century Code is amended and reenacted as follows:

**23-06-08. Burial-transit permit - Contents.** The burial-transit permit must be on the form prescribed by the state registrar of vital statistics, must be signed by the ~~registrar~~ ~~subregistrar~~ issuing it, and may be limited to a statement by the ~~local registrar~~ ~~subregistrar~~ showing:

1. That a satisfactory ~~certificate of death~~ record has been filed with the ~~local~~ state registrar as required by law.
2. That permission is granted to inter, remove, or otherwise dispose of the body of the deceased.
3. The name, age, sex, and the cause of death of the deceased and any other necessary details.

**SECTION 27. AMENDMENT.** Section 23-06-09 of the North Dakota Century Code is amended and reenacted as follows:

**23-06-09. Disposition of burial-transit permit.** The undertaker, or person acting as undertaker, shall secure the burial-transit permit from the ~~local registrar~~ ~~subregistrar~~. The undertaker, or person acting as undertaker, shall deliver such permit to the sexton or person in charge of the place of burial before interring the body or shall attach it to the box containing the corpse when the same is shipped by any transportation company. Such permit must be accepted by the sexton as authority for the interment of the body. A body may not be accepted for carriage by a common carrier unless the permit is attached as required in this section.

**SECTION 28. AMENDMENT.** Section 23-06-10 of the North Dakota Century Code is amended and reenacted as follows:

**23-06-10. Sextons to endorse and return burial-transit permit - Record of burials.** Each sexton or person in charge of the burial ground shall endorse the date of interment upon the burial-transit permit over the person's signature, and return the burial-transit permit to the subregistrar. The ~~sexton or person in charge of the burial ground~~ ~~subregistrar~~ shall return file all completed permits, so endorsed, ~~to~~ with the local registrar of that district county recorder within ten days after the date of interment or within the time prescribed by the local board of health.

The sexton shall keep a record of all interments made in the premises under the sexton's charge, stating the name of the deceased person, the place of death, the date of burial, and the name and address of the undertaker or funeral director. ~~The sexton is not required to record the cause of death or the color of the deceased.~~ Such record at all times must be open to public inspection.

In the absence of a sexton, the funeral director making the burial shall endorse and return the burial-transit permit to the ~~local registrar~~ ~~subregistrar~~.

**SECTION 29. REPEAL.** Sections 23-02.1-06, 23-02.1-07, 23-02.1-09, and 23-02.1-10 of the North Dakota Century Code are repealed.

**SECTION 30. EFFECTIVE DATE.** This Act becomes effective on January 1, 2008.

Approved April 10, 2007  
Filed April 11, 2007

**CHAPTER 235****SENATE BILL NO. 2308**

(Senators J. Lee, Warner)  
(Representatives Kreidt, Price)

**HEALTH CARE DIRECTIVE PROVISIONS**

AN ACT to amend and reenact sections 23-06.5-03 and 23-06.5-05.1 of the North Dakota Century Code, relating to provisions of a health care directive.

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

**SECTION 1. AMENDMENT.** Section 23-06.5-03 of the North Dakota Century Code is amended and reenacted as follows:

**23-06.5-03. Health care directive.**

1. A principal may execute a health care directive. A health care directive may include one or more health care instructions to health care providers, others assisting with health care, family members, and a health care agent. A health care directive may include a power of attorney to appoint an agent to make health care decisions for the principal when the principal lacks the capacity to make health care decisions, unless otherwise specified in the health care directive. Subject to the provisions of this chapter and any express limitations set forth by the principal in the health care directive, the agent has the authority to make any and all health care decisions on the principal's behalf that the principal could make.
2. After consultation with the attending physician and other health care providers, the agent shall make health care decisions:
  - a. In accordance with the agent's knowledge of the principal's wishes and religious or moral beliefs, as stated orally, or as contained in the principal's health care directive; or
  - b. If the principal's wishes are unknown, in accordance with the agent's assessment of the principal's best interests. In determining the principal's best interests, the agent shall consider the principal's personal values to the extent known to the agent.
3. A health care directive, including the agent's authority, is in effect only when the principal lacks capacity to make health care decisions, as certified in writing by the principal's attending physician and filed in the principal's medical record, and ceases to be effective upon a determination that the principal has recovered capacity.
4. Notwithstanding subsection 3, the principal may authorize in a health care directive that the agent make health care decisions for the principal even though the principal retains capacity to make health care decisions. In that case, the health care directive is in effect as stated in the health care directive under any conditions the principal may impose. The principal's authorization under this subsection may be revoked in



the same manner as a health care directive may be revoked under section 23-06.5-07.

5. The principal's attending physician shall make reasonable efforts to inform the principal of any proposed treatment, or of any proposal to withdraw or withhold treatment.
6. Nothing in this chapter permits an agent to consent to admission to a mental health facility or state institution for a period of more than forty-five days without a mental health proceeding or other court order, or to psychosurgery, abortion, or sterilization, unless the procedure is first approved by court order.

<sup>133</sup> **SECTION 2. AMENDMENT.** Section 23-06.5-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**23-06.5-05.1. Suggested health care directive form.** A health care directive may include provisions consistent with this chapter, including:

1. The designation of one or more alternate agents to act if the named agent is not reasonably available to serve;
2. Directions to joint agents regarding the process or standards by which the agents are to reach a health care decision for the principal, and a statement whether joint agents may act independently of one another;
3. Limitations, if any, on the right of the agent or any alternate agents to receive, review, obtain copies of, and consent to the disclosure of the principal's medical records;
4. Limitations, if any, on the nomination of the agent as guardian under chapter 30.1-28;
5. A document of gift for the purpose of making an anatomical gift, as set forth in chapter 23-06.2 or an amendment to, revocation of, or refusal to make an anatomical gift;
6. Limitations, if any, regarding the effect of dissolution or annulment of marriage on the appointment of an agent; ~~and~~
7. Health care instructions regarding artificially administered nutrition or hydration; and
8. The designation of an agent authorized to make health care decisions for the principal even though the principal retains the capacity to make health care decisions.

Approved May 4, 2007  
Filed May 4, 2007

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<sup>133</sup> Section 23-06.5-05.1 was also amended by section 2 of Senate Bill No. 2163, chapter 237.

**CHAPTER 236****SENATE BILL NO. 2212**

(Senators J. Lee, Dever)  
(Representatives Pietsch, Price)

**HEALTH CARE DIRECTIVES**

AN ACT to amend and reenact sections 23-06.5-10 and 23-06.5-17 of the North Dakota Century Code, relating to health care directives.

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

**SECTION 1. AMENDMENT.** Section 23-06.5-10 of the North Dakota Century Code is amended and reenacted as follows:

**23-06.5-10. Freedom from influence.**

1. A health care provider, long-term care services provider, health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital service plan may not charge a person a different rate or require any person to execute a health care directive as a condition of admission to a hospital or long-term care facility nor as a condition of being insured for, or receiving, health care or long-term care services. Health care or long-term care services may not be refused because a person has executed a health care directive.
2. ~~The appointment of an agent is not effective if, at the time of execution, the principal is a resident of a long-term care facility unless a recognized member of the clergy, an attorney licensed to practice in this state, or a person as may be designated by the department of human services or the district court for the county in which the facility is located, signs a statement affirming that the person has explained the nature and effect of the appointment to the principal or unless the principal acknowledges in writing that the principal has read a written explanation of the nature and effect of the appointment.~~
3. ~~The appointment of an agent is not effective if, at the time of execution, the principal is being admitted to or is a patient in a hospital unless a person designated by the hospital or an attorney licensed to practice in this state signs a statement that the person has explained the nature and effect of the appointment to the principal or unless the principal acknowledges in writing that the principal has read a written explanation of the nature and effect of the appointment.~~

**SECTION 2. AMENDMENT.** Section 23-06.5-17 of the North Dakota Century Code is amended and reenacted as follows:

**23-06.5-17. Optional health care directive form.** The following is an optional form of a health care directive and is not a required form:

## HEALTH CARE DIRECTIVE

I \_\_\_\_\_, understand this document allows me to do ONE OR ALL of the following:

PART I: Name another person (called the health care agent) to make health care decisions for me if I am unable to make and communicate health care decisions for myself. My health care agent must make health care decisions for me based on the instructions I provide in this document (Part II), if any, the wishes I have made known to him or her, or my agent must act in my best interest if I have not made my health care wishes known.

AND/OR

PART II: Give health care instructions to guide others making health care decisions for me. If I have named a health care agent, these instructions are to be used by the agent. These instructions may also be used by my health care providers, others assisting with my health care and my family, in the event I cannot make and communicate decisions for myself.

AND/OR

PART III: Allows me to make an organ and tissue donation upon my death by signing a document of anatomical gift.

PART I: APPOINTMENT OF HEALTH CARE AGENT  
THIS IS WHO I WANT TO MAKE HEALTH CARE DECISIONS  
FOR ME IF I AM UNABLE TO MAKE AND COMMUNICATE  
HEALTH CARE DECISIONS FOR MYSELF

(I know I can change my agent or alternate agent at any time  
and I know I do not have to appoint an agent or an alternate agent)

NOTE: If you appoint an agent, you should discuss this health care directive with your agent and give your agent a copy. If you do not wish to appoint an agent, you may leave Part I blank and go to Part II and/or Part III. None of the following may be designated as your agent: your treating health care provider, a nonrelative employee of your treating health care provider, an operator of a long-term care facility, or a nonrelative employee of a long-term care facility.

When I am unable to make and communicate health care decisions for myself, I trust and appoint \_\_\_\_\_ to make health care decisions for me. This person is called my health care agent.

Relationship of my health care agent to me: \_\_\_\_\_

Telephone number of my health care agent: \_\_\_\_\_

Address of my health care agent: \_\_\_\_\_

(OPTIONAL) APPOINTMENT OF ALTERNATE HEALTH CARE AGENT: If

my health care agent is not reasonably available, I trust and appoint \_\_\_\_\_

to be my health care agent instead.

Relationship of my alternate health care agent to me: \_\_\_\_\_

Telephone number of my alternate health care agent: \_\_\_\_\_

Address of my alternate health care agent: \_\_\_\_\_

THIS IS WHAT I WANT MY HEALTH CARE AGENT TO BE ABLE TO DO  
IF I AM UNABLE TO MAKE AND COMMUNICATE HEALTH CARE DECISIONS  
FOR MYSELF

(I know I can change these choices)

My health care agent is automatically given the powers listed below in (A) through (D). My health care agent must follow my health care instructions in this document or any other instructions I have given to my agent. If I have not given health care instructions, then my agent must act in my best interest.

Whenever I am unable to make and communicate health care decisions for myself, my health care agent has the power to:

(A) Make any health care decision for me. This includes the power to give, refuse, or withdraw consent to any care, treatment, service, or procedures. This includes deciding whether to stop or not start health care that is keeping me or might keep me alive and deciding about mental health treatment.

(B) Choose my health care providers.

(C) Choose where I live and receive care and support when those choices relate to my health care needs.

(D) Review my medical records and have the same rights that I would have to give my medical records to other people.

If I DO NOT want my health care agent to have a power listed above in (A) through (D) OR if I want to LIMIT any power in (A) through (D), I MUST say that here:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

My health care agent is NOT automatically given the powers listed below in (1) and (2). If I WANT my agent to have any of the powers in (1) and (2), I must INITIAL the line in front of the power; then my agent WILL HAVE that power.

\_\_\_\_\_(1) To decide whether to donate any parts of my body, including organs, tissues, and eyes, when I die.

\_\_\_\_\_(2) To decide what will happen with my body when I die (burial, cremation).

If I want to say anything more about my health care agent's powers or limits on the powers, I can say it here:

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**PART II: HEALTH CARE INSTRUCTIONS**

**NOTE:** Complete this Part II if you wish to give health care instructions. If you appointed an agent in Part I, completing this Part II is optional but would be very helpful to your agent. However, if you chose not to appoint an agent in Part I, you **MUST** complete, at a minimum, Part II (B) if you wish to make a valid health care directive.

These are instructions for my health care when I am unable to make and communicate health care decisions for myself. These instructions must be followed (so long as they address my needs).

**(A) THESE ARE MY BELIEFS AND VALUES ABOUT MY HEALTH CARE**  
(I know I can change these choices or leave any of them blank)

I want you to know these things about me to help you make decisions about my health care:

My goals for my health care:

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My fears about my health care:

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My spiritual or religious beliefs and traditions:

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My beliefs about when life would be no longer worth living:

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My thoughts about how my medical condition might affect my family:

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**(B) THIS IS WHAT I WANT AND DO NOT WANT FOR MY HEALTH CARE**  
(I know I can change these choices or leave any of them blank)

Many medical treatments may be used to try to improve my medical condition or to prolong my life. Examples include artificial breathing by a machine connected to a tube in the lungs, artificial feeding or fluids through tubes, attempts to start a stopped heart, surgeries, dialysis, antibiotics, and blood transfusions. Most medical treatments can be tried for a while and then stopped if they do not help.

I have these views about my health care in these situations:

(Note: You can discuss general feelings, specific treatments, or leave any of them blank).

If I had a reasonable chance of recovery and were temporarily unable to make and communicate health care decisions for myself, I would want:

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If I were dying and unable to make and communicate health care decisions for myself, I would want:

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If I were permanently unconscious and unable to make and communicate health care decisions for myself, I would want:

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If I were completely dependent on others for my care and unable to make and communicate health care decisions for myself, I would want:

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In all circumstances, my doctors will try to keep me comfortable and reduce my pain. This is how I feel about pain relief if it would affect my alertness or if it could shorten my life:

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There are other things that I want or do not want for my health care, if possible:

Who I would like to be my doctor:

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Where I would like to live to receive health care:

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Where I would like to die and other wishes I have about dying:

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My wishes about what happens to my body when I die (cremation, burial):

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Any other things:

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### PART III: MAKING AN ANATOMICAL GIFT

I would like to be an organ donor at the time of my death. I have told my family my decision and ask my family to honor my wishes. I wish to donate the following (initial one statement):

- Any needed organs and tissue.
- Only the following organs and tissue: \_\_\_\_\_

### PART IV: MAKING THE DOCUMENT LEGAL

PRIOR DESIGNATIONS REVOKED. I revoke any prior health care directive.

DATE AND SIGNATURE OF PRINCIPAL  
(YOU MUST DATE AND SIGN THIS HEALTH CARE DIRECTIVE)

I sign my name to this Health Care Directive Form  
on \_\_\_\_\_ at  
(date)

\_\_\_\_\_  
(city)

\_\_\_\_\_  
(state)

\_\_\_\_\_  
(you sign here)

(THIS HEALTH CARE DIRECTIVE WILL NOT BE VALID UNLESS IT IS NOTARIZED OR SIGNED BY TWO QUALIFIED WITNESSES WHO ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE. IF YOU HAVE ATTACHED ANY ADDITIONAL PAGES TO THIS FORM, YOU MUST DATE AND SIGN EACH OF THE ADDITIONAL PAGES AT THE SAME TIME YOU DATE AND SIGN THIS HEALTH CARE DIRECTIVE.)

### NOTARY PUBLIC OR STATEMENT OF WITNESSES

This document must be (1) notarized or (2) witnessed by two qualified adult witnesses. The person notarizing this document may be an employee of a health care or long-term care provider providing your care. At least one witness to the



execution of the document must not be a health care or long-term care provider providing you with direct care or an employee of the health care or long-term care provider providing you with direct care. None of the following may be used as a notary or witness:

1. A person you designate as your agent or alternate agent;
2. Your spouse;
3. A person related to you by blood, marriage, or adoption;
4. A person entitled to inherit any part of your estate upon your death; or
5. A person who has, at the time of executing this document, any claim against your estate.

Option 1: Notary Public

In my presence on \_\_\_\_\_ (date), \_\_\_\_\_ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.

\_\_\_\_\_  
(Signature of Notary Public)

My commission expires \_\_\_\_\_, 20\_\_.

Option 2: Two Witnesses

Witness One:

- (1) In my presence on \_\_\_\_\_ (date), \_\_\_\_\_ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.
- (2) I am at least eighteen years of age.
- (3) If I am a health care provider or an employee of a health care provider giving direct care to the declarant, I must initial this box:

[ ].

I certify that the information in (1) through (3) is true and correct.

\_\_\_\_\_  
(Signature of Witness One)

\_\_\_\_\_  
(Address)

Witness Two:

- (1) In my presence on \_\_\_\_\_ (date), \_\_\_\_\_ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.
- (2) I am at least eighteen years of age.
- (3) If I am a health care provider or an employee of a health care provider giving direct care to the declarant, I must initial this box:

[ ].

I certify that the information in (1) through (3) is true and correct.

\_\_\_\_\_

(Signature of Witness Two)

\_\_\_\_\_

(Address)

ACCEPTANCE OF APPOINTMENT OF POWER OF ATTORNEY.  
I accept this appointment and agree to serve as agent for health care decisions. I understand I have a duty to act consistently with the desires of the principal as expressed in this appointment. I understand that this document gives me authority over health care decisions for the principal only if the principal becomes incapacitated. I understand that I must act in good faith in exercising my authority under this power of attorney. I understand that the principal may revoke this power of attorney at any time in any manner.

If I choose to withdraw during the time the principal is competent, I must notify the principal of my decision. If I choose to withdraw when the principal is not able to make health care decisions, I must notify the principal's physician.

\_\_\_\_\_  
(Signature of agent/date)

\_\_\_\_\_  
(Signature of alternate agent/date)

#### PRINCIPAL'S STATEMENT

I have read a written explanation of the nature and effect of an appointment of a health care agent that is attached to my health care directive.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. \_\_\_\_\_  
(Signature of Principal)

**STATEMENT AFFIRMING EXPLANATION OF DOCUMENT TO RESIDENT OF LONG-TERM CARE FACILITY.** (Only necessary if person is a resident of long-term care facility and Part I is completed appointing an agent. This statement does not need to be completed if the resident has read a written explanation of the nature and effect of an appointment of a health care agent and completed the Principal's Statement above.)

I have explained the nature and effect of this health care directive to \_\_\_\_\_ (name of principal) who signed this document and who is a resident of \_\_\_\_\_ (name and city of facility). I am (check one of the following):

A recognized member of the clergy.

An attorney licensed to practice in North Dakota.

A person designated by the district court for the county in which the above-named facility is located.

A person designated by the North Dakota department of human services.

Dated on \_\_\_\_\_, 20\_\_\_\_. \_\_\_\_\_(Signature)

**STATEMENT AFFIRMING EXPLANATION OF DOCUMENT TO HOSPITAL PATIENT OR PERSON BEING ADMITTED TO HOSPITAL.** (Only necessary if person is a patient in a hospital or is being admitted to a hospital and Part I is completed appointing an agent. This statement does not need to be completed if the patient or person being admitted has read a written explanation of the nature and effect of an appointment of a health care agent and completed the Principal's Statement above.)

I have explained the nature and effect of this health care directive to \_\_\_\_\_ (name of principal) who signed this document and who is a patient or is being admitted as a patient of \_\_\_\_\_ (name and city of hospital). I am (check one of the following):

An attorney licensed to practice in North Dakota.

A person designated by the hospital to explain the health care directive.

Dated on \_\_\_\_\_, 20\_\_\_\_. \_\_\_\_\_ (Signature)

Approved May 4, 2007

Filed May 4, 2007

**CHAPTER 237****SENATE BILL NO. 2163**

(Senators Kilzer, J. Lee)

(Representatives Carlisle, Delmore, Klemin, Porter)

**UNIFORM ANATOMICAL GIFT ACT**

AN ACT to create and enact chapter 23-06.6 of the North Dakota Century Code, relating to the revised Uniform Anatomical Gift Act; to amend and reenact section 23-06-01.2, subsection 5 of section 23-06.5-05.1, subsection 1 of section 39-06-03.1, subsection 2 of section 39-06-07, and subsection 1 of section 39-06-14 of the North Dakota Century Code, relating to cross-references to the Uniform Anatomical Gift Act; to repeal chapter 23-06.2 of the North Dakota Century Code, relating to the Uniform Anatomical Gift Act; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 23-06-01.2 of the North Dakota Century Code is amended and reenacted as follows:

**23-06-01.2. Application of other laws.** Sections 23-06-03, 23-06-04, 23-06-05, 23-06-06, 23-06-07, 23-06-08, 23-06-09, 23-06-10, 23-06-11, 23-06-12, 23-06-16, 23-06-17, and 23-06-19 do not apply to any body or parts thereof disposed of after death pursuant to the authorization for disposal of a body or parts thereof provided in and for the purposes of chapter ~~23-06.2~~ 23-06.6.

<sup>134</sup> **SECTION 2. AMENDMENT.** Subsection 5 of section 23-06.5-05.1 of the North Dakota Century Code is amended and reenacted as follows:

5. A document of gift for the purpose of making an anatomical gift, as set forth in chapter ~~23-06.2~~ 23-06.6 or an amendment to, revocation of, or refusal to make an anatomical gift;

**SECTION 3.** Chapter 23-06.6 of the North Dakota Century Code is created and enacted as follows:

**23-06.6-01. Definitions.** As used in this chapter, unless the context requires otherwise:

1. "Adult" means an individual who is eighteen years of age or older.
2. "Agent" means an individual:
  - a. Authorized to make health care decisions on the principal's behalf by a power of attorney for health care; or

<sup>134</sup> Section 23-06.5-05.1 was also amended by section 2 of Senate Bill No. 2308, chapter 235.

- b. Expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.
- 3. "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.
- 4. "Decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift. The term includes a stillborn infant and, subject to restrictions imposed by law other than this chapter, a fetus.
- 5. "Disinterested witness" means a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift or another adult who exhibited special care and concern for the individual. The term does not include a person to which an anatomical gift could pass under section 23-06.6-10.
- 6. "Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver's license, identification card, or donor registry.
- 7. "Donor" means an individual whose body or part is the subject of an anatomical gift.
- 8. "Donor registry" means a data base that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.
- 9. "Driver's license" means a license or permit issued by the department of transportation to operate a vehicle regardless of whether conditions are attached to the license or permit.
- 10. "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.
- 11. "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.
- 12. "Hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.
- 13. "Identification card" means an identification card issued by the department of transportation.
- 14. "Know" means to have actual knowledge.
- 15. "Minor" means an individual who is under eighteen years of age.
- 16. "Organ procurement organization" means a person designated by the secretary of the United States department of health and human services as an organ procurement organization.

17. "Parent" means a parent whose parental rights have not been terminated.
18. "Part" means an organ, an eye, or tissue of a human being. The term does not include the whole body.
19. "Physician" means an individual authorized to practice medicine or osteopathy under the law of any state.
20. "Procurement organization" means an eye bank, an organ procurement organization, or a tissue bank.
21. "Prospective donor" means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made a refusal.
22. "Reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.
23. "Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted.
24. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
25. "Refusal" means an intention not to make an anatomical gift of an individual's body or part expressed by the individual in accordance with section 23-06.6-06 or which expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.
26. "Sign" means, with the present intent to authenticate or adopt a record:
  - a. To execute or adopt a tangible symbol; or
  - b. To attach to or logically associate with the record an electronic symbol, sound, or process.
27. "Technician" means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator.
28. "Tissue" means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education.
29. "Tissue bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

30. "Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

**23-06.6-02. Applicability.** This chapter applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

**23-06.6-03. Who may make an anatomical gift before donor's death.** Subject to section 23-06.6-07, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in section 23-06.6-04 by:

1. The donor, if the donor is an adult or if the donor is a minor and is:
  - a. Emancipated; or
  - b. Authorized under state law to apply for a driver's license because the donor is at least fourteen years of age;
2. An agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;
3. A parent of the donor, if the donor is an unemancipated minor; or
4. The donor's guardian.

**23-06.6-04. Manner of making anatomical gift before donor's death.**

1. A donor may make an anatomical gift:
  - a. By authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card;
  - b. In a will;
  - c. During a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or
  - d. As provided in subsection 2.
2. A donor or other person authorized to make an anatomical gift under section 23-06.6-03 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:
  - a. Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

- b. State that it has been signed and witnessed as provided in subdivision a.
- 3. Revocation, suspension, expiration, or cancellation of a driver's license or identification card upon which an anatomical gift is indicated does not invalidate the gift.
- 4. An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

**23-06.6-05. Amending or revoking anatomical gift before donor's death.**

- 1. Subject to section 23-06.6-07, a donor or other person authorized to make an anatomical gift under section 23-06.6-03 may amend or revoke an anatomical gift by:
  - a. A record signed by:
    - (1) The donor;
    - (2) The other person; or
    - (3) Subject to subsection 2, another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or
  - b. A later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.
- 2. A record signed pursuant to paragraph 3 of subdivision a of subsection 1 must:
  - a. Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and
  - b. State that it has been signed and witnessed as provided in subdivision a.
- 3. Subject to section 23-06.6-07, a donor or other person authorized to make an anatomical gift under section 23-06.6-03 may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.
- 4. A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.
- 5. A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection 1.



**23-06.6-06. Refusal to make anatomical gift - Effect of refusal.**

1. An individual may refuse to make an anatomical gift of the individual's body or part by:
  - a. A record signed by:
    - (1) The individual; or
    - (2) Subject to subsection 2, another individual acting at the direction of the individual if the individual is physically unable to sign;
  - b. The individual's will regardless of whether the will is admitted to probate or invalidated after the individual's death; or
  - c. Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.
2. A record signed pursuant to paragraph 2 of subdivision a of subsection 1 must:
  - a. Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual; and
  - b. State that it has been signed and witnessed as provided in subdivision a.
3. An individual who has made a refusal may amend or revoke the refusal:
  - a. In the manner provided in subsection 1 for making a refusal;
  - b. By subsequently making an anatomical gift pursuant to section 23-06.6-04 which is inconsistent with the refusal; or
  - c. By destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.
4. Except as otherwise provided in subsection 8 of section 23-06.6-07, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

**23-06.6-07. Preclusive effect of anatomical gift, amendment, or revocation.**

1. Except as otherwise provided in subsection 7 and subject to subsection 6, in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under section

23-06.6-04 or an amendment to an anatomical gift of the donor's body or part under section 23-06.6-05.

2. A donor's revocation of an anatomical gift of the donor's body or part under section 23-06.6-05 is not a refusal and does not bar another person specified in section 23-06.6-03 or 23-06.6-08 from making an anatomical gift of the donor's body or part under section 23-06.6-04 or 23-06.6-09.
3. If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under section 23-06.6-04 or an amendment to an anatomical gift of the donor's body or part under section 23-06.6-05, another person may not make, amend, or revoke the gift of the donor's body or part under section 23-06.6-09.
4. A revocation of an anatomical gift of a donor's body or part under section 23-06.6-05 by a person other than the donor does not bar another person from making an anatomical gift of the body or part under section 23-06.6-04 or 23-06.6-09.
5. In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 23-06.6-03, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.
6. In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 23-06.6-03, an anatomical gift of a part for one or more of the purposes set forth in section 23-06.6-03 is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under section 23-06.6-04 or 23-06.6-09.
7. If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.
8. If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

**23-06.6-08. Who may make anatomical gift of decedent's body or part.**

1. Subject to subsections 2 and 3 and unless barred by section 23-06.6-06 or 23-06.6-07, an anatomical gift of a decedent's body or part for the purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:
  - a. An agent of the decedent at the time of death who could have made an anatomical gift under subsection 2 of section 23-06.6-03 immediately before the decedent's death;
  - b. The spouse of the decedent;
  - c. Adult children of the decedent;

- d. Parents of the decedent;
  - e. Adult siblings of the decedent;
  - f. Adult grandchildren of the decedent;
  - g. Grandparents of the decedent;
  - h. An adult who exhibited special care and concern for the decedent;
  - i. The persons who were acting as the guardians of the decedent at the time of death; and
  - j. Any other person having the authority to dispose of the decedent's body.
2. If there is more than one member of a class listed in subdivision a, c, d, e, f, g, or i of subsection 1 entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under section 23-06.6-10 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.
  3. A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection 1 is reasonably available to make or to object to the making of an anatomical gift.

**23-06.6-09. Manner of making, amending, or revoking anatomical gift of decedent's body or part.**

1. A person authorized to make an anatomical gift under section 23-06.6-08 may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.
2. Subject to subsection 3, an anatomical gift by a person authorized under section 23-06.6-08 may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under section 23-06.6-08 may be:
  - a. Amended only if a majority of the reasonably available members agree to the amending of the gift; or
  - b. Revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.
3. A revocation under subsection 2 is effective only if, before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.

**23-06.6-10. Persons that may receive anatomical gift - Purpose of anatomical gift.**

1. An anatomical gift may be made to the following persons named in the document of gift:
  - a. A hospital; accredited medical school, dental school, college, or university; organ procurement organization; or other appropriate person for research or education;
  - b. Subject to subsection 2, an individual designated by the person making the anatomical gift if the individual is the recipient of the part;
  - c. An eye bank or tissue bank.
2. If an anatomical gift to an individual under subdivision b of subsection 1 cannot be transplanted into the individual, the part passes in accordance with subsection 7 in the absence of an express, contrary indication by the person making the anatomical gift.
3. If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection 1 but identifies the purpose for which an anatomical gift may be used, the following rules apply:
  - a. If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.
  - b. If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.
  - c. If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.
  - d. If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.
4. For the purpose of subsection 3, if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.
5. If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subsection 1 and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection 7.
6. If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor", "organ donor", or "body donor", or by a symbol or statement of similar import, the gift may be

used only for transplantation or therapy, and the gift passes in accordance with subsection 7.

7. For purposes of subsections 2, 5, and 6 the following rules apply:
  - a. If the part is an eye, the gift passes to the appropriate eye bank.
  - b. If the part is tissue, the gift passes to the appropriate tissue bank.
  - c. If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.
8. An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subdivision b of subsection 1, passes to the organ procurement organization as custodian of the organ.
9. If an anatomical gift does not pass pursuant to subsection 1, 2, 3, 4, 5, 6, 7, or 8 or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.
10. A person may not accept an anatomical gift if the person knows that the gift was not effectively made under section 23-06.6-04 or 23-06.6-09 or if the person knows that the decedent made a refusal under section 23-06.6-06 that was not revoked. For purposes of the subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.
11. Except as otherwise provided in subdivision b of subsection 1, nothing in this chapter affects the allocation of organs for transplantation or therapy.

#### **23-06.6-11. Search and notification.**

1. The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:
  - a. A law enforcement officer, firefighter, paramedic, or other emergency rescuer finding the individual; and
  - b. If no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.
2. If a document of gift or a refusal to make an anatomical gift is located by the search required by subdivision a of subsection 1 and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.

3. A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.

**23-06.6-12. Delivery of document of gift not required - Right to examine.**

1. A document of gift need not be delivered during the donor's lifetime to be effective.
2. Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under section 23-06.6-10.

**23-06.6-13. Rights and duties of procurement organization and others.**

1. When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the department of transportation and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.
2. A procurement organization must be allowed reasonable access to information in the records of the department of transportation to ascertain whether an individual at or near death is a donor.
3. When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.
4. Unless prohibited by law other than this chapter, at any time after a donor's death, the person to which a part passes under section 23-06.6-10 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.
5. Unless prohibited by law other than this chapter, an examination under subsection 3 or 4 may include an examination of all medical and dental records of the donor or prospective donor.
6. Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.
7. Upon referral by a hospital under subsection 1, a procurement organization shall make a reasonable search for any person listed in

section 23-06.6-08 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

8. Subject to subsection 9 of section 23-06.6-10 and section 23-06.6-22, the rights of the person to which a part passes under section 23-06.6-10 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this chapter, a person that accepts an anatomical gift of an entire body may allow embalming, burial or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under section 23-06.6-11, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.
9. Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.
10. A physician or technician may remove a donated part from the body of a donor which the physician or technician is qualified to remove.

**23-06.6-14. Coordination of procurement and use.** Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

**23-06.6-15. Sale or purchase of parts prohibited - Penalty.**

1. Except as otherwise provided in subsection 2, a person that for valuable consideration, knowingly purchases or sells a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death commits a class B misdemeanor.
2. A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

**23-06.6-16. Other prohibited act - Penalty.** A person that, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal commits a class B misdemeanor.

**23-06.6-17. Immunity.**

1. A person that acts in accordance with this chapter or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution, or administrative proceeding.
2. Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

3. In determining whether an anatomical gift has been made, amended, or revoked under this chapter, a person may rely upon representations of an individual listed in subdivision b, c, d, e, f, g, or h of subsection 1 of section 23-06.6-08 relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

**23-06.6-18. Law governing validity - Choice of law as to execution of document of gift - Presumption of validity.**

1. A document of gift is valid if executed in accordance with:
  - a. This chapter;
  - b. The laws of the state or country where the document of gift was executed; or
  - c. The laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.
2. If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.
3. A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

**23-06.6-19. Donor registry.**

1. The state department of health may establish or contract for the establishment of a donor registry.
2. The department of transportation shall cooperate with a person that administers any donor registry that this state establishes, contracts for, or recognizes for the purpose of transferring to the donor registry all relevant information regarding a donor's making, amendment to, or revocation of an anatomical gift.
3. A donor registry must:
  - a. Allow a donor or other person authorized under section 23-06.6-04 to include on the donor registry a statement or symbol that the donor has made, amended, or revoked an anatomical gift;
  - b. Be accessible to a procurement organization to allow it to obtain relevant information on the donor registry to determine, at or near death of the donor or a prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift; and
  - c. Be accessible for purposes of subdivisions a and b seven days a week on a twenty-four-hour basis.
4. Personally identifiable information on a donor registry about a donor or prospective donor may not be used or disclosed without the express



consent of the donor, prospective donor, or person that made the anatomical gift for any purpose other than to determine, at or near death of the donor or prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift.

5. This section does not prohibit any person from creating or maintaining a donor registry that is not established by or under contract with the state. Any such registry must comply with subsections 3 and 4.

**23-06.6-20. Effect of anatomical gift on advance health care directive.**

1. In this section:
  - a. "Advance health care directive" means a health care directive under chapter 23-06.5, a power of attorney for health care, or a record signed by a prospective donor containing the prospective donor's direction concerning a health care decision for the prospective donor.
  - b. "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.
  - c. "Health care decision" means any decision made regarding the health care of the prospective donor.
2. If a prospective donor has a declaration or advance health care directive, measures necessary to ensure the medical suitability of an organ for transplantation or therapy may not be withheld or withdrawn from the prospective donor, unless the declaration or advance health care directive expressly provides to the contrary.

**23-06.6-21. Cooperation between coroner or medical examiner and a procurement organization.**

1. A coroner or medical examiner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.
2. If a coroner or medical examiner receives notice from a procurement organization that an anatomical gift might be available or was made with respect to a decedent whose body is under the jurisdiction of the coroner or medical examiner and a post-mortem examination is going to be performed, unless the coroner or medical examiner denies recovery in accordance with section 23-06.6-22, the coroner or medical examiner or designee of the coroner or medical examiner shall conduct a post-mortem examination of the body or the part in a manner and within a period compatible with its preservation for the purposes of the gift.
3. A part may not be removed from the body of a decedent under the jurisdiction of a coroner or medical examiner for transplantation, therapy, research, or education unless the part is the subject of an anatomical gift. The body of a decedent under the jurisdiction of the coroner or medical examiner may not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This subsection does not preclude a coroner or medical examiner

from performing the medicolegal investigation upon the body or parts of a decedent under the jurisdiction of the coroner or medical examiner.

**23-06.6-22. Facilitation of anatomical gift from decedent whose body is under jurisdiction of coroner or medical examiner.**

1. Upon request of a procurement organization, a coroner or medical examiner shall release to the procurement organization the name, contact information, and available medical and social history of a decedent whose body is under the jurisdiction of the coroner or medical examiner. If the decedent's body or part is medically suitable for transplantation, therapy, research, or education, the coroner or medical examiner shall release post-mortem examination results to the procurement organization. The procurement organization may make a subsequent disclosure of the post-mortem examination results or other information received from the coroner or medical examiner only if relevant to transplantation or therapy.
2. The coroner or medical examiner may conduct a medicolegal examination by reviewing all medical records, laboratory test results, x-rays, other diagnostic results, and other information that any person possesses about a donor or prospective donor whose body is under the jurisdiction of the coroner or medical examiner which the coroner or medical examiner determines may be relevant to the investigation.
3. A person that has any information requested by a coroner or medical examiner pursuant to subsection 2 shall provide that information as expeditiously as possible to allow the coroner or medical examiner to conduct the medicolegal investigation within a period compatible with the preservation of parts for the purpose of transplantation, therapy, research, or education.
4. If an anatomical gift has been or might be made of a part of a decedent whose body is under the jurisdiction of the coroner or medical examiner and a post-mortem examination is not required, or the coroner or medical examiner determines that a post-mortem examination is required but that the recovery of the part that is the subject of an anatomical gift will not interfere with the examination, the coroner or medical examiner and procurement organization shall cooperate in the timely removal of the part from the decedent for the purpose of transplantation, therapy, research, or education.
5. If an anatomical gift of a part from the decedent under the jurisdiction of the coroner or medical examiner has been or might be made, but the coroner or medical examiner initially believes that the recovery of the part could interfere with the post-mortem investigation into the decedent's cause or manner of death, the coroner or medical examiner shall consult with the procurement organization or physician or technician designated by the procurement organization about the proposed recovery. The procurement organization shall provide the coroner or medical examiner with all information the organization has which could relate to the cause or manner of the decedent's death. After consultation, the coroner or medical examiner may allow the recovery.

6. Following the consultation under subsection 5, in the absence of mutually agreed-upon protocols to resolve conflict between the coroner or medical examiner and the procurement organization, if the coroner or medical examiner intends to deny recovery of an organ for transplantation, the coroner or medical examiner or designee of the coroner or medical examiner, at the request of the procurement organization, shall attend the removal procedure for the part before making a final determination not to allow the procurement organization to recover the part. During the removal procedure, the coroner or medical examiner or designee or the coroner or medical examiner may allow recovery by the procurement organization to proceed, or, if the coroner or medical examiner or designee of the coroner or medical examiner reasonably believes that the part may be involved in determining the decedent's cause or manner of death, deny recovery by the procurement organization.
7. If the coroner or medical examiner or designee or the coroner or medical examiner denies recovery under subsection 6, the coroner or medical examiner or designee of the coroner or medical examiner shall:
  - a. Explain in a record the specific reasons for not allowing recovery of the part;
  - b. Include the specific reasons in the records of the coroner or medical examiner; and
  - c. Provide a record with the specific reasons to the procurement organization.
8. If the coroner or medical examiner or designee of the coroner or medical examiner allows recovery of a part under subsection 4, 5, or 6, the procurement organization, upon request, shall cause the physician or technician who removes the part to provide the coroner or medical examiner with a record describing the condition of the part, a biopsy, a photograph, and any other information and observations that would assist in the post-mortem examination.
9. If a coroner or medical examiner or designee of a coroner or medical examiner is required to be present at a removal procedure under subsection 6, upon request the procurement organization requesting the recovery of the part shall reimburse the coroner or medical examiner or designee of the coroner or medical examiner for the additional costs incurred in complying with subsection 6.

**23-06.6-23. Relation to Electronic Signatures in Global and National Commerce Act.** This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.], but does not modify, limit or supersede section 101(a) of that Act [15 U.S.C. 7001], or authorize electronic delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].

<sup>135</sup> **SECTION 4. AMENDMENT.** Subsection 1 of section 39-06-03.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The director shall issue upon request a nondriver color photo identification card to any North Dakota resident who fulfills the requirements of this section. An application for an identification card must be made on a form furnished by the director. The application must provide for the voluntary identification of the applicant as a donor under the provisions of chapter ~~23-06.2~~ 23-06.6. If requested on the identification card application, the identification card issued by the director must include a statement making an anatomical gift under chapter ~~23-06.2~~ 23-06.6. If the person is under the age of eighteen or at least the age of eighteen and under the age of twenty-one, the photo must be against the same color background required on a motor vehicle operator's license for an operator of that age.

**SECTION 5. AMENDMENT.** Subsection 2 of section 39-06-07 of the North Dakota Century Code is amended and reenacted as follows:

2. Every application must state the full name, date of birth, sex, social security number, residence and mailing address, and briefly describe the applicant. In signing the application the applicant is deemed to have certified that all information contained on the application is true and correct. The application must be accompanied by the proper fee. The application must also provide for the voluntary identification of the applicant as a donor under the provisions of chapter ~~23-06.2~~ 23-06.6. The application must contain such other information as the director may require.

**SECTION 6. AMENDMENT.** Subsection 1 of section 39-06-14 of the North Dakota Century Code is amended and reenacted as follows:

1. The director, upon payment of a ten dollar fee, shall issue to every qualified applicant an operator's license as applied for in the form prescribed by the director. The license must bear a distinguishing number assigned to the licensee, a color photograph of the licensee, the full name, date of birth, residence address, and a brief description of the licensee, and either a facsimile of the signature of the licensee or a space upon which the licensee shall write the licensee's usual signature. The director may not issue a distinguishing number that is, contains, can be converted to, or is an encrypted version of the applicant's social security number. If the licensee is under the age of eighteen, the photograph must be against a color border or background that is different from the color used for other licensees. If the licensee is at least the age of eighteen and is under the age of twenty-one, the photograph must be against a color border or background that is different from the color used for other licensees. If requested on the license application, the license issued by the director must include a statement making an anatomical gift under chapter ~~23-06.2~~ 23-06.6. No license is valid until it has been signed by the licensee with the

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<sup>135</sup> Section 39-06-03.1 was also amended by section 1 of House Bill No. 1227, chapter 322, and section 1 of Senate Bill No. 2112, chapter 323.

licensee's usual signature. The department shall develop a system to require each applicant for an operator's license or renewal of an operator's license to determine whether or not the applicant wishes to be a donor under chapter ~~23-06.2~~ 23-06.6. For purposes of verification, an officer may require the licensee to write the licensee's signature in the presence of the officer. The director may adopt rules, pursuant to chapter 28-32, relating to the manner in which photographs are to be obtained and placed on operator's licenses. The photograph may be produced by digital imaging or other electronic means and is not a public record.

**SECTION 7. REPEAL.** Chapter 23-06.2 of the North Dakota Century Code is repealed.

Approved April 9, 2007  
Filed April 10, 2007

**CHAPTER 238****HOUSE BILL NO. 1136**

(Human Services Committee)

(At the request of the State Department of Health)

**IMMUNIZATION REQUIREMENTS AND WAIVERS**

AN ACT to create and enact a new subsection to section 23-07-17.1 of the North Dakota Century Code, relating to circumstances when children's immunization requirements may be waived; and to amend and reenact subsection 1 of section 23-07-17.1 of the North Dakota Century Code, relating to children's required immunizations for attending school.

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

<sup>136</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 23-07-17.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A child may not be admitted to any public, private, or parochial school, or day care center, child care facility, head start program, or nursery school operating in this state or be supervised through home-based instruction unless the child's parent or guardian presents to the institution authorities a certification from a licensed physician or authorized representative of the state department of health that the child has received age appropriate immunization against diphtheria, pertussis, tetanus, measles, rubella (German measles), mumps, hepatitis B, haemophilus influenza type b (Hib), varicella (chickenpox), ~~and~~ poliomyelitis, pneumococcal disease, meningococcal disease, rotovirus, and hepatitis A. In the case of a child receiving home-based instruction, the child's parent or legal guardian shall file the certification with the public school district in which the child resides.

<sup>137</sup> **SECTION 2.** A new subsection to section 23-07-17.1 of the North Dakota Century Code is created and enacted as follows:

When, in the opinion of the state health officer, extenuating circumstances make it difficult or impossible to comply with immunization requirements, the state health officer may authorize children who are not immunized to be admitted to an institution listed in subsection 1 until the state health officer determines that the extenuating circumstances no longer exist. Extenuating circumstances include a shortage of vaccine and other temporary circumstances.

Approved April 12, 2007

Filed April 13, 2007

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<sup>136</sup> Section 23-07-17.1 was also amended by section 2 of House Bill No. 1136, chapter 238.

<sup>137</sup> Section 23-07-17.1 was also amended by section 1 of House Bill No. 1136, chapter 238.

**CHAPTER 239****SENATE BILL NO. 2358**

(Senators Nelson, Fiebiger, Lyson)  
(Representatives Gruchalla, Koppelman)

**HIV TESTING FOR SEXUAL OFFENDERS**

AN ACT to amend and reenact section 23-07.7-01 of the North Dakota Century Code, relating to court-ordered testing of a sexual offender for human immunodeficiency virus; and to declare an emergency.

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

<sup>138</sup> **SECTION 1. AMENDMENT.** Section 23-07.7-01 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.7-01. Court-ordered sexual offense medical testing.**

1. The court may order any defendant charged with a sex offense under chapter 12.1-20 and any alleged juvenile offender with respect to whom a petition has been filed in a juvenile court alleging violation of chapter 12.1-20 to undergo medical testing to determine whether the defendant or alleged juvenile offender has any sexually transmitted diseases, including a test for infection with the human immunodeficiency virus or any other identified positive agent of acquired immunodeficiency syndrome. The court may not order a defendant charged with violating section 12.1-20-10, 12.1-20-12.1, or 12.1-20-13 or an alleged juvenile offender with respect to whom a petition has been filed in a juvenile court alleging violation of section 12.1-20-10, 12.1-20-12.1, or 12.1-20-13 to undergo the testing authorized by this section. The court may order the testing only if the court receives a petition from the alleged victim of the offense or from the prosecuting attorney if the alleged victim has made a written request to the prosecuting attorney to petition the court for an order authorized under this section. On receipt of a petition, the court shall determine, without a hearing, if probable cause exists to believe that a possible transfer of a sexually transmitted disease or human immunodeficiency virus took place between the defendant or alleged juvenile offender and the alleged victim. If the court determines probable cause exists, the court shall order the defendant or alleged juvenile offender to submit to testing and that a copy of the test results be released to the defendant's or alleged juvenile offender's physician and each requesting victim's physician.
  
2. If a defendant is charged with a sexual offense under chapter 12.1-20 in which the alleged victim is compelled by force or threat to engage in sexual activity or sexual contact, the prosecuting attorney shall inform the alleged victim that the alleged victim may request that a test for

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<sup>138</sup> Section 23-07.7-01 was also amended by section 3 of Senate Bill No. 2138, chapter 131.

infection with the human immunodeficiency virus or any other identified agent of acquired immunodeficiency syndrome be administered to the defendant. If the alleged victim requests that the test be administered, the prosecuting attorney shall notify the court. The court shall order that the test be administered within forty-eight hours after the date the complaint or information is filed or after the defendant's initial appearance.

3. ~~The~~ If a test is ordered under subsection 1 or 2, the physicians for the defendant or alleged juvenile offender and requesting alleged victim must be specifically named in the court order, and the court order must be served on the physicians before any test.

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

Approved April 26, 2007  
Filed April 27, 2007



**CHAPTER 240****SENATE BILL NO. 2109**

(Human Services Committee)

(At the request of the Department of Human Services)

**BASIC AND LONG-TERM CARE BED MORATORIUM**

AN ACT to amend and reenact subsection 1 of section 23-09.3-01.1 and subsection 1 of section 23-16-01.1 of the North Dakota Century Code, relating to the moratorium on licensing of basic care for medical assistance recipient beds and the moratorium on expansion of long-term care bed capacity; to provide for a legislative council study; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 23-09.3-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Basic care beds may not be added to the state's licensed bed capacity during the period between August 1, ~~2005~~ 2007, and July 31, ~~2007~~ 2009, except when:
  - a. A nursing facility converts nursing facility beds to basic care; or
  - b. An entity demonstrates to the state department of health and the department of human services that basic care services are not readily available within a designated area of the state or that existing basic care beds within a fifty-mile radius have been occupied at ninety percent or more for the previous twelve months. In determining whether basic care services will be readily available if an additional license is issued, preference may be given to an entity that agrees to any participation program established by the department of human services for individuals eligible for services under the medical assistance program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].
  - c. If the state department of health and the department of human services grant approval of new basic care beds to an entity, the approved entity shall license the beds within forty-eight months from the date of approval.

**SECTION 2. AMENDMENT.** Subsection 1 of section 23-16-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding sections 23-16-06 and 23-16-10, except when a facility reverts basic care beds to nursing facility beds, nursing facility beds may not be added to the state's licensed bed capacity during the period between August 1, ~~2005~~ 2007, and July 31, ~~2007~~ 2009. A nursing facility may not convert licensed nursing bed capacity to basic care bed capacity or convert basic care beds back to nursing facility beds more than one time in a twelve-month period if the beds have been licensed as basic care.

**SECTION 3. LEGISLATIVE COUNCIL STUDY - LONG-TERM CARE.**

During the 2007-08 interim, the legislative council shall study the state's long-term care system including capacity, geographical boundaries for determining capacity, the need for home and community-based services, a methodology to identify areas of the state which are in need of additional skilled nursing facility beds, access, workforce, reimbursement, and payment incentives. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.

Approved May 2, 2007

Filed May 3, 2007

**CHAPTER 241****HOUSE BILL NO. 1488**

(Representatives Kreidt, Nelson, Pollert, Price)  
(Senator J. Lee)

**BASIC CARE FACILITY SURVEYS**

AN ACT to amend and reenact section 23-09.3-04 of the North Dakota Century Code, relating to state department of health surveys of basic care facilities; and to provide for a report to the legislative council.

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

**SECTION 1. AMENDMENT.** Section 23-09.3-04 of the North Dakota Century Code is amended and reenacted as follows:

**23-09.3-04. Department to establish standards - Licensing - Inspection - Survey - Prosecute violations.** ~~It is the duty of the~~ The department ~~to~~ shall establish standards for basic care facilities. The department shall inspect all places and grant annual licenses to basic care facilities as conform to the standards established and comply with the rules prescribed, as provided in this chapter. The department shall implement a survey process for basic care facilities which for purposes of the life safety portions of the survey, all surveys must be announced; which for purposes of the health portions of the survey, half of the surveys must be announced; and which for purposes of complaints related to health and life safety, all surveys must be unannounced. As part of the survey process, the department shall develop, in consultation with basic care facilities, and shall implement a two-tiered system of identifying areas of noncompliance with the health portions of the survey. The department shall prosecute all violations of this chapter.

**SECTION 2. STATE DEPARTMENT OF HEALTH - REPORT TO LEGISLATIVE COUNCIL.** Before August 1, 2008, the state department of health shall provide a report to the legislative council regarding the impact of implementation of this Act, including whether the department will be recommending any legislative changes to the basic care survey process.

Approved April 23, 2007  
Filed April 24, 2007

**CHAPTER 242****SENATE BILL NO. 2273**

(Senators Erbele, Heitkamp, Wardner)  
(Representatives Dietrich, Gulleason, Kretschmar)

**HOUSING AUTHORITY BONDS**

AN ACT to amend and reenact sections 23-11-11, 23-11-20, and 23-11-21 and subsection 23 of section 23-11-24 of the North Dakota Century Code, relating to housing authorities.

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

<sup>139</sup> **SECTION 1. AMENDMENT.** Section 23-11-11 of the North Dakota Century Code is amended and reenacted as follows:

**23-11-11. Powers of authority.** An authority has the following powers and duties:

1. To exercise public and essential governmental functions.
2. To sue and be sued.
3. To have perpetual succession.
4. To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority.
5. To make, amend, and repeal such bylaws, rules, and regulations, not inconsistent with this chapter, as are necessary to carry into effect the powers and purposes of the authority.
6. To prepare, carry out, acquire, lease, and operate housing projects within its area of operation.
7. To provide for the construction, reconstruction, improvement, alteration, or repair of any housing project, or any part of a housing project, within the authority's area of operation.
8. To arrange or contract for the furnishing by any person or any public or private agency of services, privileges, works, or facilities for, or in connection with, a housing project or the occupants of a housing project.
9. To include, in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractor comply with requirements as to minimum wages and maximum hours of labor and

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<sup>139</sup> Section 23-11-11 was also amended by section 3 of House Bill No. 1033, chapter 403, and section 12 of Senate Bill No. 2214, chapter 293.

any conditions that the federal government may have attached to the financial aid for the project.

10. To lease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project and, subject to the limitations contained in this chapter, to establish and revise the rents or charges in the housing project.
11. To own, hold, and improve property.
12. To purchase, lease, obtain options upon, or acquire, by gift, grant, bequest, devise, or otherwise, any property or any interest in property.
13. To acquire real property by the exercise of the power of eminent domain.
14. To sell, lease, exchange, transfer, assign, pledge, or dispose of any property, or any interest in property.
15. To insure, or provide for the insurance of, any property, or any operation of the authority, against any risks or hazards.
16. To procure insurance or guaranties from the federal government of the payment of any debts, or parts of debts, secured by mortgages on any property included in any of the authority's housing projects, whether the debts were incurred by the authority or not.
17. To invest any funds held by the authority in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to a savings bank's control.
18. To purchase its bonds at a price not more than the principal amount of the bonds and accrued interest, a bond so purchased is canceled.
19. To investigate, in the authority's area of operation, living, dwelling, and housing conditions and the means and methods of improving the same.
20. To determine, within the authority's area of operation, where slum areas exist or where there is a shortage of decent, safe, and sanitary dwelling accommodations for persons of low or moderate income.
21. To make studies and recommendations relating to the problem of clearing, replanning, and reconstructing the slum areas within the authority's area of operation and the problem of providing dwelling accommodations for the persons of low or moderate income, and to cooperate with the city, county, or state, or any political subdivision in any action taken in connection with these problems.
22. To engage in research, studies, and experimentation on the subject of housing within the authority's area of operation.
23. To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for the authority's information.

24. To administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers, and to issue commissions for the examinations of witnesses who are outside of the state or unable to attend before the authority or who are excused from attendance.
25. To make available to appropriate agencies, including those charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or unsanitary structures within the authority's area of operation, the authority's findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety, or welfare.
26. To issue bonds from time to time for any of its corporate purposes.
27. To issue refunding bonds for the purpose of paying or retiring bonds previously issued by the authority.
28. To borrow money or accept grants or other financial assistance from the federal government for, or in aid of, any housing project within the authority's area of operation.
29. To take over or lease or manage any housing project or undertaking constructed or owned by the federal government.
30. To comply with conditions and to enter into mortgages, trust indentures, leases, or agreements as may be necessary, convenient, or desirable to carry out this section.
31. To do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance, or operation of any housing project.
32. To exercise all or any part or combination of powers granted.
33. To exercise within the authority's area of operation the authority granted to the industrial commission under section 54-17-07.6.
34. To exercise the power to provide operation and maintenance expenses under subdivision a of subsection 23 of section 23-11-24.
35. To exercise the power to issue pledge the general obligation bonds of the city or county for which the housing authority is created in accordance with ~~chapter 21-03~~ subsection 23 of section 23-11-24.
36. To develop a plan identifying the public purposes of the authority's ownership, conditions that would make the authority's ownership no longer necessary for accomplishing those public purposes, and a plan to divest the authority's ownership interest as soon as economically prudent once those conditions occur and to effectuate the plan.
37. To exercise other powers and duties as may be necessary to carry out the purposes and provisions of this chapter.

An authority, in exercising the powers specified in subsections 23, 24, and 25, may act through one or more of the commissioners or through other persons designated by the authority. Provisions of law with respect to the acquisition, operation, or disposition of property by other public bodies are not applicable to an authority unless there is specific provision to that effect by the legislative assembly. The construction of a housing project is a public improvement for which an authority is subject to the competitive bidding requirements of chapter 48-01.1.

**SECTION 2. AMENDMENT.** Section 23-11-20 of the North Dakota Century Code is amended and reenacted as follows:

**23-11-20. Bonds - Types which may be issued.**

1. An authority may issue any type of bond as the authority determines necessary for the purpose of financing housing for persons of low or moderate income, including a bond on which the interest and principal are payable:
  - a. Exclusively from the income and revenues of the housing project financed with the proceeds of the bond or with the proceeds together with a grant from the federal government in aid of the project;
  - b. Exclusively from the income and revenues of certain designated housing projects whether the projects are financed in whole or in part with the proceeds of the bond; or
  - c. From the authority's revenues generally.
2. The bonds and other obligations of the authority are not payable out of any funds or properties other than those of the authority or funds of the city or county which has pledged its general obligation pursuant to subsection 23 of section 23-11-24. These bonds, however, may be secured additionally by a pledge of any loan, grant, or contribution, or part of the same, from the federal government or other source of a pledge of any income or revenues or by a mortgage on any housing project, projects, or other property of the authority.

**SECTION 3. AMENDMENT.** Section 23-11-21 of the North Dakota Century Code is amended and reenacted as follows:

**23-11-21. Bonds - Liability - Tax exempt.** Neither the commissioners of an authority nor any person executing bonds of the authority is liable personally on the bonds by reason of the issuance of the bonds, ~~nor is any city, county, or state, or political subdivision, liable on the bonds.~~ The bonds and other obligations of an authority are not a debt of the city, county, or state, nor of any political subdivision, ~~and must so state on the face of the bond. The bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction unless a city or county pledges its general obligation to the payment of the bonds under subsection 23 of section 23-11-24.~~ The bond obligations are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and the bonds, together with the interest on the bonds and income from the bonds are exempt from taxation. The tax exemption provisions of this chapter are considered part of the contract for the security of the bond obligations authorized by this chapter and do not need to be restated in the bond obligations.

**SECTION 4. AMENDMENT.** Subsection 23 of section 23-11-24 of the North Dakota Century Code is amended and reenacted as follows:

23. To make covenants and to do any acts and things as may be necessary, convenient, or desirable in order to secure the authority's bonds, or, in the absolute discretion of the authority, as will tend to make the bonds more marketable notwithstanding that the covenants, acts, or things are not enumerated, including:
  - a. To the payment of the principal of and interest on bond obligations, when due, there may be pledged as a first charge and lien the gross revenues of the housing project financed in whole or in part by the obligations, and the governing city or county may covenant to provide additional funds for the benefit of that housing project to the extent that the gross revenues in excess of those debt service requirements are not also sufficient from time to time to pay the reasonable operating and maintenance expenses of that housing project.
  - b. The governing body of an authority may pledge the general obligation of the city or county for which the authority was created as additional security for bonds provided that the authority finds that the pledged revenues will equal or exceed one hundred ten percent of the principal and interest due on the bonds for each year, the maturity of the bonds does not exceed thirty-five years, and the principal amount of the issue must be and the general obligation pledge are approved by the governing body of the city or county in which the housing project is located and whose general obligation is pledged. ~~Public hearings~~ A public hearing must be held on issuance of the obligations and the pledge of the general obligation by the city or county in which the housing project is located. The ~~hearings~~ hearing must be held at least fifteen days, but not more than one hundred twenty days, before the sale of the obligations.

Approved May 4, 2007  
Filed May 4, 2007



**CHAPTER 243****SENATE BILL NO. 2090**

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

**SMOKING POLICY AND BUILDING FUND  
EXPENDITURES**

AN ACT to create and enact a new subsection to section 23-12-10 of the North Dakota Century Code, relating to an outdoor smoking policy for certain areas on the state capitol grounds; and to amend and reenact section 48-10-02 of the North Dakota Century Code, relating to use of and expenditures from the capitol building fund.

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

**SECTION 1.** A new subsection to section 23-12-10 of the North Dakota Century Code is created and enacted as follows:

Before October 1, 2007, the office of management and budget shall develop and implement a uniform policy regarding smoking restrictions with respect to the outdoor areas near the public entrances of all buildings on the state capitol grounds.

**SECTION 2. AMENDMENT.** Section 48-10-02 of the North Dakota Century Code is amended and reenacted as follows:

**48-10-02. Capitol building fund to be administered by the capitol grounds planning commission - Continuing appropriation - Procedure for expenditure of certain funds.** The capitol grounds planning commission shall have general powers to superintend the administration of the capitol building fund, its interest and income fund, and its investments and properties. It may cause any lands now held in such funds to be sold at market value, direct the conversion of any securities now held by such funds to cash, approve expenditures from such funds subject to law and legislative appropriations, and to do all other things necessary to carry out the intent and purposes of this section. The board of university and school lands or its designee, on the commission's behalf, shall see to the investment and management of the capitol building fund and its interest and income fund and shall account to the commission concerning these funds at the commission's request.

Provided further, all moneys and other property in the capitol building fund, except as otherwise appropriated, are hereby dedicated and reserved to the exclusive purpose of the construction of an addition to the legislative wing of the state capitol building, and the capitol grounds planning commission shall take necessary steps to accumulate and conserve the money and property in the capitol building fund for such purpose.

The commission may, during any biennium, expend from the interest and income fund of the capitol building fund a sum not to exceed fifty percent of the unencumbered balance on the first day of any biennium, and such amount is hereby appropriated to the capitol grounds planning commission. The expenditure may be made, after consideration of the capitol grounds master plan, for projects or planning but shall not exceed ~~forty~~ one hundred thousand dollars per biennium. The expenditure may only be made upon approval by two-thirds of the total membership of the commission. The expenditure must be made upon a voucher, or vouchers, prepared by the office of management and budget at the direction of the commission.

Approved May 1, 2007

Filed May 2, 2007

**CHAPTER 244****HOUSE BILL NO. 1232**

(Representatives Delmore, Hawken, S. Meyer, Pietsch)  
(Senators Bakke, Krebsbach)

**UMBILICAL CORD BLOOD DONATION**

AN ACT to provide for umbilical cord blood donation.

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

**SECTION 1. Umbilical cord blood donation.**

1. Unless it is medically inadvisable, a hospital shall allow a pregnant patient to arrange for the blood extracted from the umbilical cord of the patient's newborn child to be donated to a public cord blood bank. A patient who agrees to donate cord blood to a public cord blood bank may not be charged for the costs of collecting, storing, or transporting the cord blood.
2. A hospital is not required to collect cord blood if in the professional judgment of a licensed physician the collection of the cord blood would threaten the health of the mother or newborn child. This section does not require a hospital or hospital employee, including a physician, nurse, or other medical staff, to collect cord blood if the collection of cord blood conflicts with the bona fide religious practices and beliefs of the hospital or hospital employee. This section does not require a hospital to arrange for the donation of blood extracted from umbilical cords.

Approved March 9, 2007

Filed March 12, 2007

**CHAPTER 245****HOUSE BILL NO. 1094**

(Political Subdivisions Committee)  
(At the request of the State Department of Health)

**UNDERGROUND STORAGE TANK REGULATIONS**

AN ACT to amend and reenact section 23-20.3-04.1 of the North Dakota Century Code, relating to underground storage tank regulations.

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

**SECTION 1. AMENDMENT.** Section 23-20.3-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**23-20.3-04.1. Underground storage tank regulations.** Pursuant to the requirements of chapter 28-32, the department shall, after notice and opportunity for public hearing and comment, adopt:

1. Regulations for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment.
2. Regulations for maintaining records of any monitoring of a leak detection system, inventory control system, or tank testing system.
3. Regulations for reporting of any releases and corrective action taken in response to a release from an underground tank.
4. Regulations for taking corrective action in response to a release from an underground storage tank.
5. Regulations for the closure of tanks to prevent future releases of regulated substances into the environment.
6. Regulations for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.
7. Regulations establishing standards for installation of new underground storage tanks.
8. Regulations establishing standards for construction and performance of new underground storage tanks.
9. Regulations for notifying the department or designated local agency of the existence of any operational or nonoperational underground storage tank.
10. Regulations for a permit fee system to own, install, or operate an underground storage tank.

However, regulations adopted by the department may not be more stringent than applicable federal rules adopted pursuant to Public Law 98-616 [98 Stat. 3277; ~~42 U.S.C. 6994 et seq.~~] requirements of the federal Resource Conservation and Recovery Act and the federal Energy Policy Act of 2005 in effect on August 1, 2007.

Approved March 15, 2007  
Filed March 15, 2007

**CHAPTER 246****HOUSE BILL NO. 1161**

(Representatives Uglem, DeKrey, Froelich, Vigesaa)  
(Senators Bowman, Krauter)

**EMERGENCY SERVICES AND PERSONNEL  
REGULATION**

AN ACT to amend and reenact sections 23-27-01, 23-27-02, 23-27-03, and 23-27-04, subsections 2 and 3 of section 23-27-04.1, and sections 23-27-04.2 and 23-27-04.4 of the North Dakota Century Code, relating to regulation of emergency medical services operations and emergency medical services personnel.

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

**SECTION 1. AMENDMENT.** Section 23-27-01 of the North Dakota Century Code is amended and reenacted as follows:

**23-27-01. License required - Licensing of emergency medical services operations - Exception - Waiver.**

1. The state department of health shall license emergency medical services operations. After June 30, 2001, the department shall limit the issuance of a license for any new emergency medical services operation based on the needs of the service area if the applicant for the new license was licensed before July 1, 2001, and was subsequently relicensed under section 23-27-04.5. A license for an emergency medical services operation is nontransferable.
2. Emergency medical services may not be advertised, offered, or provided to the public ~~unless the~~ except by an emergency medical services operator of the services is licensed as an emergency medical services operation by the department that provides the emergency medical services through emergency medical services personnel. A license for an operator of an emergency medical services operation is nontransferable and the
3. Except as otherwise provided under subsection 4, an emergency medical services operator must be separately licensed for each operation that operator operates. Each of the operator's emergency medical services operations and an operation that is headquartered from a separate location must be considered a separate operation; however, Under this subsection, an operation with a single headquarters site may dispatch vehicles and emergency medical services personnel from more than one location if calls requesting services are received and orders for vehicle dispatch are made at the single headquarters site.
4. Notwithstanding subsection 3, an operator of an emergency medical services operation may operate one or more substation ambulance services operations under a single license if:

- a. The headquarters ambulance services operation is not a substation ambulance services operation of another emergency medical services operation;
  - b. The substation ambulance services operation area borders the headquarters ambulance services operation area or borders another substation of the headquarters ambulance service operation;
  - c. The headquarters ambulance services operation and the substation ambulance services operation are dispatched by the same entity; and
  - d. The operator of the emergency medical services operation pays a license fee for each of its substation ambulance services operations.
- 3- 5. The provisions of this chapter do not apply to an operator from another state ~~who~~ which is headquartered at a location outside of this state and transports patients across state lines, but the operator may not treat patients within this state or pick up patients within this state for transportation to locations within this state, except as provided by rule.
- 4- 6. The state health council shall adopt rules for special licenses and waiver provisions for an operator of an emergency medical services operation intended for industrial sites not available to the general public.

**SECTION 2. AMENDMENT.** Section 23-27-02 of the North Dakota Century Code is amended and reenacted as follows:

**23-27-02. Definition of emergency medical services Definitions.** For the purpose of this chapter, ~~"emergency unless the context otherwise requires:~~

1. "Department" means the state department of health.
2. "Emergency medical services" means the prehospital medical stabilization ~~or~~ and transportation of ~~persons~~ individuals who are sick, injured, wounded, or otherwise incapacitated or helpless by ~~any person~~ who holds out to the public as being in that service or who regularly provides that service emergency medical services personnel with physician oversight. The term includes assessing, stabilizing, and treating life-threatening and non-life-threatening medical conditions.
3. "Emergency medical services operation" means an entity licensed to offer and provide emergency medical services by emergency medical services personnel with physician oversight. The term includes basic life support ambulance services, advanced life support ambulance services, air ambulance services, and quick-response unit services.
4. "Emergency medical services personnel" means individuals who provide emergency medical services for emergency medical services operations. The term includes emergency medical services professionals, drivers, and department-certified emergency medical services providers, such as cardiopulmonary resuscitation drivers and first responders.

5. "Emergency medical services professional" means an individual licensed by the department as an emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic.

**SECTION 3. AMENDMENT.** Section 23-27-03 of the North Dakota Century Code is amended and reenacted as follows:

**23-27-03. License fees.** The fee for a an emergency medical services operation license to operate an emergency medical services operation ~~and perform emergency medical services or a substation ambulance services operation~~ must be set by the state health council at a sum of not more than twenty-five dollars annually, as may be required to defray the costs of administration of the licensing program. ~~Individuals providing~~ This operation license fee does not apply to licensure or certification of emergency medical services ~~may not be assessed this license fee personnel.~~ All license fees must be paid to the state department of health and deposited with the state treasurer and credited to the state general fund.

**SECTION 4. AMENDMENT.** Section 23-27-04 of the North Dakota Century Code is amended and reenacted as follows:

**23-27-04. Standards for operators.**

1. An emergency medical services operation within this state may not operate unless the operation is licensed in accordance with this chapter and rules adopted by the state health council. The rules must include:
  - a. Time when operator's services must be available.
  - b. Type of motor vehicle operator's license needed for drivers of ground vehicles.
  - c. Training standards for operation personnel.
  - d. Equipment and ground vehicle standards.
  - e. Annual license fees.
  - f. Number of personnel required for each run.
  - g. The scope of practice for uncertified drivers, certified personnel, and emergency medical services professionals.
  - h. Other requirements as may be found necessary to carry out the intent of this chapter.
2. An officer, employee, or agent of any prehospital emergency medical ~~service services operation~~ may refuse to transport an individual for which transport is not medically necessary and may recommend an alternative course of action to that individual if the prehospital emergency medical service has developed protocols that include direct medical control to refuse transport of an individual.

**SECTION 5. AMENDMENT.** Subsections 2 and 3 of section 23-27-04.1 of the North Dakota Century Code are amended and reenacted as follows:



2. For the purpose of this section, "volunteer" means an individual who receives no compensation or who is paid expenses, reasonable benefits, nominal fees, or a combination of expenses, reasonable benefits, and nominal fees to perform the services for which the individual volunteered, provided that the fees do not exceed ~~twenty-four hundred~~ ten thousand dollars in any calendar year.
3. For a volunteer physician providing medical ~~direction overview~~ to an emergency medical services operation and the operation's personnel, the ~~twenty-four hundred ten thousand~~ dollar maximum fees amount is calculated separately for each emergency medical services operation for which the physician volunteered medical ~~direction overview~~. This section does not relieve a person from liability for damages resulting from the intoxication, willful misconduct, or gross negligence of the person rendering the emergency care or services.

**SECTION 6. AMENDMENT.** Section 23-27-04.2 of the North Dakota Century Code is amended and reenacted as follows:

**23-27-04.2. Emergency medical services - State assistance.** The state department of health shall assist in the training of emergency medical services personnel of certain emergency medical services operations as determined by the department and financially shall assist certain emergency medical services operations as determined by the department in obtaining equipment. Assistance provided under this section must be within the limits of legislative appropriation. The department shall adopt criteria for eligibility for assistance in the training of emergency medical services personnel of various types of emergency medical services operations. To qualify for financial assistance for equipment an emergency medical services operation shall certify, in the manner required by the department, that the operation has fifty percent of the amount of funds necessary for identified equipment acquisitions. The department shall adopt a schedule of eligibility for financial assistance for equipment. The schedule must provide for a direct relationship between the amount of funds certified and the number of responses during the preceding calendar year for the purpose of rendering medical care, transportation, or both, to individuals who were sick or incapacitated. The schedule must require that as the number of responses increases, a greater amount of funds certified is required. The schedule must classify responses and the financial assistance available for various classifications. The department may establish minimum and maximum amounts of financial assistance to be provided to an emergency medical services operation under this section. If applications for financial assistance exceed the amount of allocated and available funds, the department may prorate the funds among the applicants in accordance with criteria adopted by the department. No more than one-half of the funds appropriated by the legislative assembly each biennium and allocated for training assistance may be distributed in the first year of the biennium.

**SECTION 7. AMENDMENT.** Section 23-27-04.4 of the North Dakota Century Code is amended and reenacted as follows:

**23-27-04.4. Supervision of certified or licensed emergency service medical technician hospital personnel.** Certified or licensed emergency medical technicians-intermediate and paramedics, who are employed by a hospital and who are working in a nonemergency setting may provide patient care within a scope of practice established by the department. Under this section, these emergency medical services professionals are under the supervision of the hospital's ~~patient services management~~ nurse executive.

Approved March 23, 2007

Filed March 23, 2007

**CHAPTER 247****HOUSE BILL NO. 1162**

(Representatives Haas, D. Johnson, Monson, Schmidt)  
(Senators J. Lee, Warner)

**EMERGENCY SERVICES COVERAGE AND CARE**

AN ACT to create and enact a new section to chapter 23-27 of the North Dakota Century Code, relating to a state health council study of emergency medical services, county reporting of emergency medical services coverage, and use of property tax levies for emergency medical services; to amend and reenact section 14-10-17.1 of the North Dakota Century Code, relating to consent for a minor to receive emergency medical care; and to provide for a report to the legislative council.

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

**SECTION 1. AMENDMENT.** Section 14-10-17.1 of the North Dakota Century Code is amended reenacted as follows:

**14-10-17.1. Minor's emergency care.** ~~Any~~ A minor may contract for and receive emergency examination, care, or treatment in a life-threatening situation without ~~permission, authority, or the consent of a~~ the minor's parent or guardian. If a minor has an emergency medical condition or the potential for an emergency medical condition, consent to emergency examination, care, or treatment of the minor is implied if reasonable steps to contact the minor's parent or guardian are unsuccessful. This section does not authorize a minor to withhold consent to emergency examination, care, or treatment.

**SECTION 2.** A new section to chapter 23-27 of the North Dakota Century Code is created and enacted as follows:

**Study of standards of reasonable coverage - County reporting - Use of property tax levies.**

1. During the 2007-08 interim, the state health council shall study the minimum requirements of reasonable emergency medical services coverage which must take into account the response time for emergency medical services. Before July 1, 2008, the state health officer shall report to the legislative council the outcome and recommendations of this study.
2. The board of county commissioners of every county in this state shall conduct an annual review of the emergency medical services coverage within that county and shall submit an annual report to the state health officer in a format approved by the state department of health.

3. A taxing district that levies property taxes for support of emergency medical services shall ensure that every emergency medical services operation that operates in that taxing district receives a benefit of this tax.

Approved March 23, 2007  
Filed March 23, 2007

**CHAPTER 248****HOUSE BILL NO. 1109**

(Representative Wald)

**PETROLEUM TANK RELEASE COMPENSATION  
DEFINITIONS AND FEES**

AN ACT to amend and reenact sections 23-37-02 and 23-37-17 of the North Dakota Century Code, relating to petroleum tank release compensation fund definitions and registration fees.

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

**SECTION 1. AMENDMENT.** Section 23-37-02 of the North Dakota Century Code is amended and reenacted as follows:

**23-37-02. (Effective through July 31, 2011) Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Actually incurred" means, in the case of corrective action expenditures, that the owner, the operator, the landowner, an insurer, or a contractor hired by the owner, operator, or the landlord has expended time and materials and that only that person is receiving reimbursement from the fund.
2. "Administrator" means the manager of the state fire and tornado fund.
3. "Board" means the petroleum release compensation board.
4. "Commissioner" means the insurance commissioner.
5. "Corrective action" means an action required by the department to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including any remedial emergency measures. The term does not include the repair or replacement of equipment or preconstructed property.
6. "Dealer" means any person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.
7. "Department" means the state department of health.
8. "Fund" means the petroleum release compensation fund.
9. "Location" means a physical address or site that has contiguous properties. Noncontiguous properties within a municipality or other governmental jurisdiction are considered separate locations.
10. "Operator" means any person in control of, or having responsibility for, the daily operation of a tank under this chapter.

- ~~40-~~ 11. "Owner" means any person who holds title to, controls, or possesses an interest in the tank before the discontinuation of its use.
- ~~44-~~ 12. "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, and the United States government.
- ~~42-~~ 13. "Petroleum" means any of the following:
- a. Gasoline and petroleum products as defined in chapter 19-10.
  - b. Constituents of gasoline and fuel oil under subdivision a.
  - c. Oil sludge and oil refuse.
- ~~43-~~ 14. "Portable tank" means a storage tank along with its piping and wiring that is not stationary or affixed, including a tank that is on skids.
15. "Release" means any unintentional spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from a tank into the environment whether occurring before or after the effective date of this chapter, but does not include discharges or designed venting allowed under federal or state law or under adopted rules.
- ~~44-~~ 16. "Tank" means any one or a combination of containers, vessels, and enclosures, whether aboveground or underground, including associated piping or appurtenances used to contain an accumulation of petroleum. The term does not include:
- a. Tanks owned by the federal government.
  - b. Tanks used for the transportation of petroleum.
  - c. A pipeline facility, including gathering lines, regulated under:
    - (1) The Natural Gas Pipeline Safety Act of 1968.
    - (2) The Hazardous Liquid Pipeline Safety Act of 1979.
    - (3) An interstate pipeline facility regulated under state laws comparable to the provisions of law in paragraph 1 or 2.
  - d. An underground farm or residential tank with a capacity of one thousand one hundred gallons [4163.94 liters] or less or an aboveground farm or residential tank of any capacity used for storing motor fuel for noncommercial purposes. However, the owner of an aboveground farm or residential tank may, upon application, register the tank and be eligible for reimbursement under this chapter.
  - e. A tank used for storing heating oil for consumptive use on the premises where stored.
  - f. A surface impoundment, pit, pond, or lagoon.

- g. A flowthrough process tank.
  - h. A liquid trap or associated gathering lines directly related to oil or gas production or gathering operations.
  - i. A storage tank situated in an underground area such as a basement, cellar, mine working, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.
  - j. A tank used for the storage of propane.
  - k. A tank used to fuel rail locomotives or surface coal mining equipment.
  - l. An aboveground tank used to feed diesel fuel generators. Upon application, the owner or operator of an aboveground tank used to feed diesel fuel generators may register the tank and is eligible for reimbursement under this chapter.
  - m. A portable tank.
  - n. A tank with a capacity under one thousand three hundred twenty gallons [4996.728 liters] used to store lubricating oil.
17. "Tank integrity test" means a test to determine that a tank is sound and not leaking. For an underground tank, the term means a certified third-party test that meets environmental protection agency leak detection requirements. For an aboveground tank, the term means a test conducted according to steel tank institute SP 001 or American petroleum institute 653.
- 45- 18. "Third party" means a person who is damaged by the act of a registered owner, operator, or dealer requiring corrective action or a person who suffers bodily injury or property damage caused by a petroleum release.

**SECTION 2. AMENDMENT.** Section 23-37-17 of the North Dakota Century Code is amended and reenacted as follows:

**23-37-17. (Effective through July 31, 2011) Registration fee.**

1. An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by that person. If on the first day of July in any year the amount of money in the petroleum release compensation fund is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If on the first day of July in any year the amount of money in the petroleum release compensation fund is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. Annual registration fees must be reduced to five dollars if on the first day of July in any year the amount of money in the fund exceeds nine million dollars. Annual registration fees must continue at the fee of five dollars until the money in the fund does not exceed nine million dollars. ~~An owner or operator of a tank that was required to be registered by law on or before July 1, 2001, shall pay seventy-five dollars for each aboveground tank and one hundred~~

twenty-five dollars for each underground tank owned or operated by that person for any previous years that the tank was required to be registered for which a fee was not paid.

2. An owner or operator of an existing tank that is discovered at a location that currently and previously has had tanks registered with the fund on or before July 1, 2007, shall pay seventy-five dollars for each aboveground tank and one hundred twenty-five dollars for each underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid. The payment includes the fees and the penalty for the failure to register.
3. An owner or operator of an existing tank at a location that was not previously and continuously registered with the fund, whether the registration was required by law or not, on or before July 1, 2007, must provide the fund with a phase two environmental study conducted by a qualified firm according to American society for testing materials standards. A tank integrity test must also be performed. The environmental study and tank integrity test must be reviewed by the commissioner along with the application for registration with the fund. If the commissioner rejects the application, the applicant is denied eligibility to the fund. However, if the site is remediated and the leaking tank is replaced, the applicant may reapply for registration with the fund. A new installation that is using a used tank must provide tank integrity test results for the used tank. Use of a synthetic liner in an aboveground dike system negates the need for a tank integrity test. The owner or operator of a new tank at a new site or a new tank at an existing site that had a tank registered at the site previously need only pay the required fees for registration with the fund.
4. If accepted for registration with the fund, the owner or operator of the tank shall pay seventy-five dollars for each aboveground tank and one hundred twenty-five dollars for an underground tank for each underground tank for each previous year that the tank was required to be registered for which a fee was not paid, regardless of ownership in each of those years.
5. The registration fees collected under this section must be paid to the fund administrator for deposit in the state treasury for the dedicated credit to the petroleum release compensation fund.

Approved March 9, 2007  
Filed March 12, 2007



**CHAPTER 249****HOUSE BILL NO. 1154**

(Representative Keiser)  
(Senator Kilzer)

**TANNING FACILITY REGULATION**

AN ACT to create and enact chapter 23-39 of the North Dakota Century Code, relating to regulation of tanning facilities; and to provide a penalty.

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

**SECTION 1.** Chapter 23-39 of the North Dakota Century Code is created and enacted as follows:

**23-39-01. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Department" means the state department of health.
2. "Phototherapy device" means equipment that emits ultraviolet radiation and is used in treating disease.
3. "Tanning device" means equipment that emits electromagnetic radiation having wavelengths in the air between two hundred and four hundred nanometers and which is used for tanning of human skin and any equipment used with that equipment, including food and drug administration-approved protective eyewear, timers, and handrails. The term does not include a phototherapy device used by a physician.
4. "Tanning facility" means a place or business that provides individuals access to a tanning device.

**23-39-02. Permit - Fee.**

1. A person may not operate a tanning facility without a permit issued by the department under this chapter. The holder of a permit shall display the permit in a conspicuous place at the tanning facility for which the permit is issued. Permits issued under this chapter expire annually. An applicant for a permit shall submit an application for a permit to the department, on a form provided by the department, with a permit fee established by the department. The application must include the name and complete mailing address and street address of the tanning facility and any other information reasonably required by the department for the administration of this section.
2. The permit fee established by the department must be based on the cost of conducting routine and complaint inspections and enforcement actions and the cost of preparing and sending license renewals. Any fee collected under this section must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly. The department

shall waive all or a portion of the permit fee for any tanning facility that is subject to local jurisdiction.

3. The department shall accept city or county enforcement of this chapter if the department determines the city or county requirements meet or exceed the requirements of this chapter and any rules adopted under this chapter.

**23-39-03. Advertising - Notice - Warning sign - Tubes - Prohibited claims.**

1. A tanning facility may not state in any advertising that the tanning facility holds a license or permit issued by the department to operate a tanning facility.
2. A tanning facility shall give to each of the tanning facility's customers written notice of the following:
  - a. Failure to wear the eye protection provided by the tanning facility may result in damage to the customer's eyes and may cause cataracts;
  - b. Overexposure to a tanning device causes burns;
  - c. Repeated exposure to a tanning device may cause premature aging of the skin and may cause skin cancer;
  - d. Abnormal skin sensitivity or burning of the skin while using a tanning device may be caused by:
    - (1) Certain foods;
    - (2) Certain cosmetics; and
    - (3) Certain medications, including tranquilizers, diuretics, antibiotics, high blood pressure medicines, and birth control pills; and
  - e. An individual who takes a drug should consult a physician before using a tanning device.
3. A tanning facility shall display prominently a warning sign in each area where a tanning device is used. The warning sign must convey the following directions and information:
  - a. Follow instructions.
  - b. Avoid too frequent or too lengthy exposure. Like exposure to the sun, use of a tanning device can cause eye and skin injury and allergic reactions. Repeated exposure can cause chronic sun damage, which is characterized by wrinkling, dryness, fragility and bruising of the skin, and skin cancer.
  - c. Wear food and drug administration-approved protective eyewear.

- d. Ultraviolet radiation from tanning devices will aggravate the effects of the sun, so do not sunbathe during the twenty-four hours immediately preceding or immediately following the use of a tanning device.
  - e. Medications and cosmetics may increase your sensitivity to ultraviolet radiation. Consult a physician before using a tanning device if you are using medications, have a history of skin problems, or believe that you are especially sensitive to sunlight. Women who are pregnant or using birth control pills and who use a tanning device may develop discolored skin.
  - f. If your skin does not tan when exposed to the sun, it is unlikely that your skin will tan when exposed to this tanning device.
- 4. The tanning facility shall maintain a record of the date on which each fluorescent tube is replaced.
  - 5. An owner or employee of a tanning facility may not claim, or distribute materials that claim, that using a tanning device is free of risk.

**23-39-04. Liability.** A tanning facility's compliance with this chapter does not relieve the owner or any employee of the tanning facility from liability for injury sustained by a user of a tanning device.

**23-39-05. Duties.**

- 1. The owner of a tanning facility shall ensure that all of the following are fulfilled:
  - a. A customer under eighteen years of age may not be permitted to use the tanning facility until the customer provides the facility with written consent, in a form prescribed by the department, of a parent or legal guardian to use the tanning facility. The consent must indicate that the parent or legal guardian has read the warnings required by this chapter and that the customer agrees to wear food and drug administration-approved protective eyewear. The parent or legal guardian shall provide a notarized statement of consent or sign the consent form in the presence of the owner of the tanning facility or an employee responsible for the operation of the ultraviolet radiation device of the facility. The written consent form expires twelve months from the date signed. A customer under the age of fourteen years may not be allowed to utilize a tanning device at a tanning facility without a written order from a physician licensed in this state and without being accompanied by a parent or legal guardian for every use of the tanning facility.
  - b. During operating hours there is present at the tanning facility a trained operator who is able to inform customers about, and assist customers in, the proper use of tanning devices.
  - c. Each tanning bed is properly sanitized after each use.
  - d. Properly sanitized and securely fitting food and drug administration-approved protective eyewear that protects the

wearer's eyes from ultraviolet radiation and allows enough vision to maintain balance is made available to the customer.

- e. A customer is not allowed to use a tanning device unless the customer agrees to use food and drug administration-approved protective eyewear.
  - f. A customer is shown how to use such physical aids as handrails and markings on the floor to determine the proper distance from the tanning device.
  - g. A timing device that is accurate within ten percent is used.
  - h. Each tanning device is equipped with a mechanism that allows the customer to turn off the tanning device.
  - i. A customer is limited to the maximum exposure time recommended by the manufacturer.
  - j. A customer is not allowed to use a tanning device more than once every twenty-four hours.
  - k. The interior temperature of the tanning facility does not exceed one hundred degrees Fahrenheit.
  - l. The statements under subdivision a of subsection 2 are retained by the tanning facility for the lesser of three years or until the customer signs a new statement.
2. A user of a tanning facility shall do all of the following:
- a. Immediately before the customer's first use of a tanning facility in a year, sign a statement acknowledging that the customer has read and understands the notice under subsection 2 of section 23-39-03 and the warning sign under subsection 3 of section 23-39-03 and specifying that the customer agrees to use food and drug administration-approved protective eyewear.
  - b. Use food and drug administration-approved protective eyewear at all times while using a tanning device.

**23-39-06. Injury reports.** If a customer of a tanning facility reports a sunburn injury to that facility resulting from the use of its tanning device, the owner shall provide the customer with written information on how to report the alleged injury to the state department of health. If a health care provider treats a patient for a sunburn injury and determines, in the exercise of professional judgment, that the injury occurred as a result of using a tanning device at a tanning facility, the health care provider shall report the circumstances of the injury to the state department of health. A health care provider making or not making a report in good faith pursuant to this section is immune from liability for making or not making a report.

**23-39-07. Enforcement - Rules - Penalty.** The department shall enforce this chapter. The state health council shall adopt rules necessary to implement this chapter. The department may deny issuance of a permit to an applicant or suspend or revoke any permit issued under this chapter if the applicant or permitholder, or an employee of the applicant or permitholder, violates this chapter or any rule adopted to implement this chapter. Violation of this chapter or any rule adopted to implement this chapter is a class B misdemeanor.

Approved April 23, 2007

Filed April 24, 2007

## CHAPTER 250

### HOUSE BILL NO. 1296

(Representatives Haas, Boe, Vigesaa, Wald)  
(Senators Andrist, Warner)

## INSURANCE PREMIUM TAX DISTRIBUTION

AN ACT to create and enact chapter 23-40 of the North Dakota Century Code, relating to distribution of insurance premiums tax collections to emergency medical services operations; to amend and reenact section 18-04-04.1 and subsection 1 of section 26.1-03-17 of the North Dakota Century Code, relating to the insurance premiums tax collections; to provide for a report; and to provide an appropriation.

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

**SECTION 1. AMENDMENT.** Section 18-04-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**18-04-04.1. Insurance tax distribution fund.** The insurance tax distribution fund is a special fund in the state treasury. The portion of revenue provided in section 26.1-03-17 must be deposited in the fund for disbursement as provided in this chapter and chapter 23-40, subject to legislative appropriation.

**SECTION 2.** Chapter 23-40 of the North Dakota Century Code is created and enacted as follows:

**23-40-01. Eligibility.** To be eligible to apply for funds under this chapter, an applicant must be the licenseholder of an emergency medical services operation that has been licensed under chapter 23-27 for a period of at least twelve months before the filing of the application under section 23-40-02, must bill for services at a level at least equivalent to the medicare billing level, and must meet any additional requirements set by rule adopted by the state health council.

**23-40-02. Application.** Before November first of each year, the licenseholder of an emergency medical services operation shall file a complete application with the state department of health on a form provided by the department. The application must include an affirmation of the operation's billing levels, documentation of the availability of local matching funds, and other information as may be required by the department.

**23-40-03. Strategic plan.** The state department of health shall establish and update regularly a strategic plan for an integrated emergency medical services program in this state which includes a comprehensive statewide emergency medical services system. The strategic plan may include consideration of transportation distances to hospitals, the size of service areas, the distance between emergency medical services operations, the age of emergency medical services personnel, the use of and the willingness to use first responders, the feasibility of consolidation of emergency medical services operations, the types of calls received, and call volume.

**23-40-04. Eligibility for distribution of funds.** The state health officer shall make eligibility determinations, level of local matching funds determinations, and distribution amount determinations under this chapter in accordance with the

department's strategic plan for providing emergency medical services in this state. The department shall establish a sliding percent formula for determining the percentage of an applicant's local matching fund obligation. The sliding percent formula must be based on the department's strategic plan and must include consideration of how the applicant fits into the strategic plan and consideration of the needs of emergency medical services operations in the applicant's neighboring service areas. Eligibility for funds under this chapter is not an entitlement. The state health officer may not distribute funds to an applicant unless the applicant has verified the existence of local matching funds at the level determined by the state health officer, but which must be at least ten percent but not more than ninety percent of the proposed distribution amount.

**23-40-05. Allocation for distribution of funds.** During the first year of the biennium, the state health officer may not distribute more than one-half of the biennial legislative appropriation and during the second year of the biennium the state health officer may distribute the remainder of the biennial legislative appropriation.

**23-40-06. Use of funds.** A recipient of funds under this chapter shall use the funds in a manner consistent with rules adopted by the state health council. A recipient of funds may not use funds for capital expenses such as emergency vehicles and emergency medical services equipment.

<sup>140</sup> **SECTION 3. AMENDMENT.** Subsection 1 of section 26.1-03-17 of the North Dakota Century Code is amended and reenacted 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 fraternal benefit and benevolent societies, doing business in this state, a tax on the gross amount of premiums, assessments, membership fees, subscriber fees, policy fees, service fees collected by any third-party administrator providing administrative services to a group that is self-insured for health care benefits, and finance and service charges received in this state during the preceding calendar year, at the rate of two percent with respect to life insurance, one and three-fourths percent with respect to accident and health insurance, and one and three-fourths 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 March first following the year for which the tax is assessable. Collections from this tax must be deposited in the insurance tax distribution fund under section 18-04-04.1 but not in an amount exceeding one-half of the biennial amount appropriated for distribution under ~~section~~ sections 18-04-05 and 23-40-05 in any fiscal year. Collections from this tax exceeding the amount deposited in the insurance tax distribution fund each fiscal year must be deposited in the general fund in the state treasury. If the due date falls on a Saturday or legal holiday, the tax is payable on the next succeeding business day.

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<sup>140</sup> Section 26.1-03-17 was also amended by section 2 of Senate Bill No. 2183, chapter 206.

**SECTION 4. ASSESSMENT OF STATE'S EMERGENCY MEDICAL SERVICES SYSTEM - REPORT.** The state department of health shall seek to contract with a third party for an assessment of the state's emergency medical services system to assist in developing an integrated emergency medical services program that includes a comprehensive statewide emergency medical services system. The assessment may address regulation and policy; resource management; human resources and training; transportation; facilities; communications; trauma systems; public information, education, and prevention; medical direction; and an evaluation. The department shall report the findings to the legislative council no later than July 1, 2008.

**SECTION 5. APPROPRIATION.** There is appropriated out of any moneys in the insurance tax distribution fund in the state treasury, not otherwise appropriated, the sum of \$1,250,000, or so much of the sum as may be necessary, to the state department of health for the purpose of making payments of insurance premiums tax collections to emergency medical services operations, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 6. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$30,000, or so much of the sum as may be necessary, to the state department of health for the purpose of funding an assessment of the state's emergency medical services system under section 4 of this Act, for the biennium beginning July 1, 2007, and ending June 30, 2009.

Approved May 1, 2007  
Filed May 2, 2007



# HIGHWAYS, BRIDGES, AND FERRIES

## CHAPTER 251

### HOUSE BILL NO. 1166

(Representatives Klein, Pollert, Weisz)  
(Senators Krebsbach, G. Lee, Nething)

### HIGHWAY 52 MULTILANE CONSTRUCTION

AN ACT to provide for a portion of a paved four-lane highway for United States highway 52.

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

**SECTION 1. Multilane highway for United States highway 52.** The director of the department of transportation shall include, as part of the department's project development process, a four-lane alternate when it develops the environmental document for the next major reconstruction project for United States highway 52 from reference point 52-101.683 to reference point 52-122.789. It is recommended that the four-lane alternative be selected as the preferred alternate and be constructed if environmental clearance is obtained.

Approved April 17, 2007

Filed April 18, 2007

**CHAPTER 252****HOUSE BILL NO. 1130**

(Industry, Business and Labor Committee)  
(At the request of the Department of Transportation)

**HIGHWAY CONSTRUCTION ARBITRATION**

AN ACT to amend and reenact sections 24-02-26.1 and 24-02-28 of the North Dakota Century Code, relating to highway construction arbitration.

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

**SECTION 1. AMENDMENT.** Section 24-02-26.1 of the North Dakota Century Code is amended and reenacted as follows:

**24-02-26.1. Condition precedent to contractor demand for highway construction arbitration - Claims for extra compensation.** In addition to the provisions of section 24-02-30, full compliance by a contractor with the provisions of this section is a condition precedent to the contractor's right to demand arbitration. If the contractor believes the contractor is entitled to additional compensation for work or materials not covered in the contract or not ordered by the engineer as extra work or force account work in accordance with the contract specifications, the contractor shall, prior to beginning the work which the claim will be based upon, notify the engineer in writing of the intent to make claim for additional compensation. If the basis for the claim does not become apparent until the contractor has commenced work on the project and it is not feasible to stop the work, the contractor shall immediately notify the engineer that the work is continuing and that written notification of the intent to make claim will be submitted within ten calendar days. Failure of the contractor to give the notification required and to afford the engineer facilities and assistance in keeping strict account of actual costs will constitute a waiver of claim for additional compensation in connection with the work already performed. Notification of a claim, and the fact that the engineer has kept account of the costs involved, may not be construed as proving or substantiating the validity or actual value of the claim.

~~Any person~~ A contractor submitting a claim for compensation under this section, personally or on behalf of another person or entity, must do so in writing, not later than ninety days after the department has submitted the final estimate to the contractor. The claim must state the monetary amount of the claim, the reason for the claim, when the loss was incurred, and a short statement of the factual situation under which the claim arose. The claim must be made under oath or equivalent affirmation. ~~The director shall provide claim forms to persons requesting or indicating a need for them.~~

The director shall act on ~~the claim~~ claims of less than three million dollars within sixty days after the claim is served upon the director. The director shall act on claims of three million dollars or more within one hundred eighty days after the claim is served upon the director. The contractor and the director may negotiate a supplemental agreement for the claim items that are accepted by the director, and the director shall immediately pay the contractor for any additional compensation resulting from the supplemental agreement. The contractor may demand arbitration on the remaining claim items within ninety days after the contractor has been notified of the director's action on the claim.

The contractor shall make available to the department and allow the department to examine and copy all of the contractor's records, documents, worksheets, and other data which are pertinent to the justification of the claim and to the substantiation of all costs related to the claim. The department shall also make available to the contractor all of the department's records, documents, worksheets, and other data which are pertinent to the department's response to the claim.

**SECTION 2. AMENDMENT.** Section 24-02-28 of the North Dakota Century Code is amended and reenacted as follows:

**24-02-28. Procedure for arbitration.** After a board of arbitration has been appointed, a submission in writing must be executed as provided in section 32-29.3-06, but the submission must provide for the entry of judgment upon the award by the district court of the county in which the improvement, or some part thereof, involved in the contract is located. The county must be specified in the submission. The submission must be executed by the director. After submission of the arbitration agreement, the arbitration must proceed in accordance with the provisions of chapter 32-29.3, unless a party submits the dispute to arbitration in accordance with the construction industry arbitration rules of the American arbitration association. If the rules of the American arbitration association conflict with North Dakota law, North Dakota law governs. The decision of the arbitrators must be in writing and must state the basis for the decision.

Approved March 13, 2007

Filed March 14, 2007

**CHAPTER 253****SENATE BILL NO. 2305**

(Senators Triplett, Bowman, Cook)  
(Representatives DeKrey, Griffin, Wieland)

**COUNTY HIGHWAY RIGHT OF WAY CONDEMNATION  
DAMAGES**

AN ACT to amend and reenact section 24-05-10 of the North Dakota Century Code, relating to the membership of a special board to fix damages in county highway right of way condemnations.

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

**SECTION 1. AMENDMENT.** Section 24-05-10 of the North Dakota Century Code is amended and reenacted as follows:

**24-05-10. Damages - How ascertained - Special board.** If the board of county commissioners is unable to purchase the lands required for the purposes mentioned in section 24-05-09 at a price ~~which such~~ that the board deems ~~determines~~ reasonable, the board by order or resolution shall declare the necessity for the taking of ~~such the~~ lands and. The board of county commissioners shall direct appoint a special board consisting of the county auditor, the county treasurer, and the recorder or the county official responsible for the duties of the auditor and two other officials of such the county to fix the damages for such the taking.

Approved May 2, 2007  
Filed May 3, 2007

**CHAPTER 254****HOUSE BILL NO. 1344**  
(Representatives Kerzman, Klemin)  
(Senator Krauter)**SECTION LINE IMPROVEMENTS**

AN ACT to create and enact a new section to chapter 24-07 of the North Dakota Century Code, relating to section lines.

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

**SECTION 1.** A new section to chapter 24-07 of the North Dakota Century Code is created and enacted as follows:

**Improvement of section line by landowner.** A person having a surface interest in a parcel of land connected by a section line to another parcel of land in which that person has a surface interest or to a highway may petition the board of county commissioners in an unorganized township or the board of township supervisors in an organized township to authorize the petitioner to improve the section line or a portion of the section line for the purpose of travel for agricultural purposes. The petition may be approved if the section line cannot be traveled due to natural obstacles or difficulty of terrain and if the petitioner does not have a readily accessible alternative route of travel to the parcel of land. The petitioner must improve the section line or a portion of the section line at the petitioner's expense.

Approved April 10, 2007  
Filed April 11, 2007

# MENTAL AND PHYSICAL ILLNESS OR DISABILITY

## CHAPTER 255

### HOUSE BILL NO. 1347

(Representative Uglem)  
(Senator J. Lee)

### COMMITTEE ON PROTECTION AND ADVOCACY MEMBERSHIP

AN ACT to amend and reenact subsections 3 and 4 of section 25-01.3-02 of the North Dakota Century Code, relating to appointment of a member of the committee on protection and advocacy by a North Dakota nonprofit advocacy group of people with disabilities, to update the name of another appointing group, and to stagger the terms of the members.

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

<sup>141</sup> **SECTION 1. AMENDMENT.** Subsection 3 of section 25-01.3-02 of the North Dakota Century Code is amended and reenacted as follows:

3. The appointments and terms of committee members are as follows:
  - a. The governor shall appoint two committee members for two-year terms, beginning on August first in each ~~odd-numbered~~ even-numbered year.
  - b. The legislative council shall appoint one member from each house of the legislative assembly for two-year terms, beginning on August first in each odd-numbered year.
  - c. The governing board of the ~~association for retarded citizens arc~~ of North Dakota shall appoint one committee member for a three-year term, beginning ~~on~~ August first in each year that is evenly divisible by three.
  - d. The governing board of ~~people first of a~~ North Dakota nonprofit advocacy group for people with disabilities shall appoint one committee member for a three-year term, beginning on August first in each year that is ~~evenly~~ evenly divisible by three with a remainder of one. Whenever an appointment to this position is to be made, the other members of the committee shall select a North Dakota

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<sup>141</sup> Section 25-01.3-02 was also amended by section 2 of House Bill No. 1347, chapter 255.

nonprofit advocacy group for people with disabilities to make this appointment.

- e. The governing board of the mental health association in North Dakota shall appoint one committee member for a three-year term, beginning on August first in each year that is ~~evenly~~ divisible by three with a remainder of two.

<sup>142</sup> **SECTION 2. AMENDMENT.** Subsection 4 of section 25-01.3-02 of the North Dakota Century Code is amended and reenacted as follows:

4. Each committee member appointed by ~~the association for retarded citizens of North Dakota, people first of North Dakota, or the mental health association in North Dakota~~ a North Dakota nonprofit advocacy group for people with disabilities must be:
  - a. An individual with disabilities who is eligible for services; or
  - b. A parent, family member, guardian, advocate, or other authorized representative of an individual with disabilities who is eligible for services.

Approved March 5, 2007  
Filed March 6, 2007

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<sup>142</sup> Section 25-01.3-02 was also amended by section 1 of House Bill No. 1347, chapter 255.

**CHAPTER 256****SENATE BILL NO. 2130**

(Human Services Committee)

(At the request of the Department of Human Services)

**PSYCHIATRIC TREATMENT FACILITIES FOR  
CHILDREN**

AN ACT to amend and reenact subsection 7 of section 15.1-31-01, sections 25-03.2-01, 25-03.2-02, 25-03.2-03, 25-03.2-03.1, 25-03.2-04, 25-03.2-05, 25-03.2-06, and 25-03.2-07, subsection 4 of section 25-03.2-08, section 25-03.2-10, and subdivision a of subsection 9 of section 43-12.1-04 of the North Dakota Century Code, relating to psychiatric residential treatment facilities for children; to provide an effective date; and to declare an emergency.

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

<sup>143</sup> **SECTION 1. AMENDMENT.** Subsection 7 of section 15.1-31-01 of the North Dakota Century Code is amended and reenacted as follows:

7. A child placed for purposes other than education in a group or residential care facility or in a psychiatric residential treatment center facility is not eligible for open enrollment under this section.

**SECTION 2. AMENDMENT.** Section 25-03.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.2-01. Definitions.** In this chapter, unless the context otherwise requires:

1. "Child" or "children" means a person or persons under the age of twenty-one.
2. "Clinical supervision" means the oversight responsibility for individual treatment plans and individual service delivery, provided by qualified mental health professionals.
- ~~2.~~ 3. "Department" means the department of human services.
- ~~3.~~ 4. "Diagnostic assessment" means a written summary of the history, diagnosis, and individual treatment needs of a mentally ill person using diagnostic, interview, and other relevant assessment techniques provided by a mental health professional.
4. 5. "Individual treatment plan" means a written plan of intervention, treatment, and services for a mentally ill person that is developed under

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<sup>143</sup> Section 15.1-31-01 was also amended by section 1 of House Bill No. 1199, chapter 181.



the clinical supervision of a mental health professional on the basis of a diagnostic assessment.

- 5- 6. "Mentally ill person" has the same meaning provided for in section 25-03.1-02.
- 6- 7. "Qualified mental health professional" means a licensed physician who is a psychiatrist, a licensed clinical psychologist who is qualified for listing on the national register of health service providers in psychology, a licensed certified social worker who is a board-certified diplomate in clinical social work, or a nurse who holds advanced licensure in psychiatric nursing. "Psychiatric residential treatment facility for children" means a facility or a distinct part of a facility that provides to children a total, twenty-four hour, therapeutic environment integrating group living, educational services, and a clinical program based upon a comprehensive, interdisciplinary clinical assessment, and an individualized treatment plan that meets the needs of the child and family. The services are available to children in need of and able to respond to active psychotherapeutic intervention and who cannot be effectively treated in their own family, in another home, or in a less restrictive setting. The facility must meet the requirements of a psychiatric residential treatment facility as set out in title 42, Code of Federal Regulations, part 483.352.
- 7- 8. "Residential treatment" means a twenty-four hour a day program under the clinical supervision of a mental health professional, in a community residential setting other than an acute care hospital, for the active treatment of mentally ill persons. "Qualified mental health professional" means a licensed physician who is a psychiatrist, a licensed clinical psychologist who is qualified for listing on the national register of health service providers in psychology, a licensed certified social worker who is a board-certified diplomate in clinical social work, or a nurse who holds advanced licensure in psychiatric nursing.
- 8- 9. "Residential treatment center for children" means a facility or a distinct part of a facility that provides to children and adolescents a total, twenty-four hour, therapeutic environment integrating group living, educational services, and a clinical program based upon a comprehensive, interdisciplinary clinical assessment, and an individualized treatment plan that meets the needs of the child and family. The services are available to children in need of and able to respond to active psychotherapeutic intervention and who cannot be effectively treated in their own family, in another home, or in a less restrictive setting. "Residential treatment" means a twenty-four hour a day program under the clinical supervision of a mental health professional, in a community residential setting other than an acute care hospital, for the active treatment of mentally ill persons.

**SECTION 3. AMENDMENT.** Section 25-03.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.2-02. License required.** The operator of a publicly or privately operated psychiatric residential treatment center facility for children shall meet the requirements for licensure and shall secure a license from the department.

**SECTION 4. AMENDMENT.** Section 25-03.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.2-03. Requirements for license.** The department shall issue a license for the operation of a psychiatric residential treatment center facility for children upon a showing that:

1. The premises to be used are in fit, safe, and sanitary condition and properly equipped to provide good care and treatment;
2. The program director of the center facility holds, at a minimum, a master's degree in social work, psychology, or in a related ~~behavioral science~~ behavioral science field with at least two years of professional experience in the treatment of children ~~and adolescents~~ suffering from mental illnesses or emotional disturbances. The executive director of the center facility must have, at a minimum, a bachelor's degree in a behavioral science or a bachelor's degree in any field and two years of experience in administration;
3. The staff employed by the center facility is supervised by the program director and qualified by training and experience to provide services to children ~~and adolescents~~ suffering from mental illnesses or emotional disturbances. The center facility annually must provide training to staff which is relevant to the needs of the client population;
4. The health, safety, and well-being of the ~~residents~~ children cared for and treated in the center facility will be properly safeguarded;
5. There are sufficient treatment, educational, recreational and leisure, and physical facilities and services available to the ~~residents~~ children in the center facility;
6. The center facility will provide for a medical and psychological examination of each ~~resident~~ child within seventy-two hours of admission and thereafter as needed by the ~~resident~~ child;
7. An interdisciplinary team consisting of at least one qualified mental health professional will review each individual treatment plan at least monthly and update or amend the plan to meet the needs of the ~~resident~~ child; ~~and~~
8. The facility develops postdischarge plans and coordinates facility services and related community services with partial discharge plans with each child's family, school, and community upon discharge to ensure continuity of care; and
9. The center facility is in compliance with requirements for psychiatric residential treatment facilities under 42 U.S.C. 1396d [Pub. L. 89-97; 79 Stat. 351] and title 42, Code of Federal Regulations, part 441, and with this chapter and with rules adopted under this chapter.

<sup>144</sup> **SECTION 5. AMENDMENT.** Section 25-03.2-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.2-03.1. (Effective through July 31, 2007) Moratorium on expansion of psychiatric residential treatment center facility for children bed capacity.** Notwithstanding sections 25-03.2-03 and 25-03.2-08, unless a needs assessment conducted by the department indicates a need for the licensing of additional bed capacity, the department may not issue a license under this chapter for any additional bed capacity for a psychiatric residential treatment center facility for children above the state's gross number of beds licensed as of June 30, 2003.

**SECTION 6. AMENDMENT.** Section 25-03.2-04 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.2-04. Conviction not bar to licensure - Exceptions.** Conviction of an offense by an owner or operator of a center facility does not disqualify the center from licensure unless the department determines that the offense has a direct bearing upon a person's ability to serve the public as an owner or operator of a psychiatric residential treatment center facility for children, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

**SECTION 7. AMENDMENT.** Section 25-03.2-05 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.2-05. Content of license.** The license to operate a psychiatric residential treatment center facility for children must specify:

1. The name of the licensee.
2. The premises to which the license is applicable.
3. The number of residents children who may be received in the premises at any one time.
4. The date of expiration of the license.

**SECTION 8. AMENDMENT.** Section 25-03.2-06 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.2-06. Admission criteria.** A child may be admitted to a psychiatric residential treatment center facility for children if, the child has been diagnosed by a psychiatrist or psychologist as suffering from a mental illness or emotional disturbance and the child is in need of and able to respond to active psychotherapeutic intervention and cannot be effectively treated in the child's family, in another home, or in a less restrictive setting. The center facility must take into account the age and diagnosis of the child in order to provide an environment that is safe and therapeutic for all residents children.

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<sup>144</sup> Section 25-03.2-03.1 was also amended by section 1 of Senate Bill No. 2066, chapter 257.

**SECTION 9. AMENDMENT.** Section 25-03.2-07 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.2-07. Method of providing service.** A psychiatric residential treatment center facility for children shall provide for the development of an individual treatment plan, based upon a comprehensive interdisciplinary diagnostic assessment, which includes the role of the family, identifies the goals and objectives of the residential therapeutic activities and treatment, provides a schedule for accomplishing the therapeutic activities and treatment goals and objectives, and identifies the individuals responsible for providing services, consistent with the individual treatment plan, to residents children. Clinical supervision of the individual treatment plan must be accomplished by full-time or part-time employment of or contracts with qualified mental health professionals. Clinical supervision must be documented by the qualified mental health professionals cosigning individual treatment plans and by entries in the resident's child's record regarding supervisory activity.

**SECTION 10. AMENDMENT.** Subsection 4 of section 25-03.2-08 of the North Dakota Century Code is amended and reenacted as follows:

4. The owner, operator, or an employee of the center facility is or has been found guilty of an offense determined by the department to have a direct bearing on the person's ability to serve as an owner, operator, or employee, or the department determines, following conviction of an offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1.

**SECTION 11. AMENDMENT.** Section 25-03.2-10 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.2-10. Department may adopt rules.** The department may adopt rules for the conduct of psychiatric residential treatment centers facilities for children.

<sup>145</sup> **SECTION 12. AMENDMENT.** Subdivision a of subsection 9 of section 43-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

- a. Within psychiatric residential treatment centers facilities for children licensed under chapter 25-03.2 and North Dakota Administrative Code chapter 75-03-17;

**SECTION 13. EFFECTIVE DATE.** This Act becomes effective on July 1, 2007.

**SECTION 14. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 2, 2007  
Filed March 2, 2007

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<sup>145</sup> Section 43-12.1-04 was also amended by section 2 of Senate Bill No. 2025, chapter 112.

**CHAPTER 257****SENATE BILL NO. 2066**

(Human Services Committee)

(At the request of the Department of Human Services)

**RESIDENTIAL TREATMENT CENTER AND CHILD  
CARE FACILITY MORATORIUM**

AN ACT to amend and reenact sections 25-03.2-03.1 and 50-11-02.3 of the North Dakota Century Code, relating to the moratorium on expansion of residential treatment center for children bed capacity and the moratorium on residential child care facility or group home bed capacity.

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

<sup>146</sup> **SECTION 1. AMENDMENT.** Section 25-03.2-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.2-03.1. (Effective through July 31, 2007) Moratorium on expansion of residential treatment center for children bed capacity.** Notwithstanding sections 25-03.2-03 and 25-03.2-08, unless a needs assessment conducted by the department indicates a need for the licensing of additional bed capacity, the department may not issue a license under this chapter for any additional bed capacity for a residential treatment center for children above the state's gross number of beds licensed as of June 30, 2003. This section does not apply to nor prohibit the department from licensing additional bed capacity for a new psychiatric residential treatment facility for children if the additional beds are designated for the care of children and adolescents who are residents of other states.

**SECTION 2. AMENDMENT.** Section 50-11-02.3 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-02.3. (Effective through July 31, 2007) Moratorium on expansion of residential child care facility or group home bed capacity.** Notwithstanding sections 50-11-02 and 50-11-09, unless a needs assessment conducted by the department indicates a need for the licensing of additional bed capacity, the department may not issue a license under this chapter for any additional bed capacity for a residential child care facility or a group home above the state's gross number of beds licensed as of June 30, 2003.

Approved April 4, 2007

Filed April 5, 2007

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<sup>146</sup> Section 25-03.2-03.1 was also amended by section 5 of Senate Bill No. 2130, chapter 256.

**CHAPTER 258****HOUSE BILL NO. 1217**

(Representatives DeKrey, Delmore, Koppelman)  
(Senators Hacker, Lyson, Nelson)

**SEXUALLY DANGEROUS INDIVIDUAL CIVIL  
COMMITMENT**

AN ACT to amend and reenact subsection 2 of section 25-03.3-05 and section 25-03.3-13 of the North Dakota Century Code, relating to the civil commitment of sexually dangerous individuals; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 25-03.3-05 of the North Dakota Century Code is amended and reenacted as follows:

2. For purposes of this chapter, the disclosure of individually identifiable health information by a treating facility or mental health professional shall, if requested, disclose individually identifiable health information to a court, the state hospital, state's attorney, retained counsel, or other a mental health professional, including an expert examiner, and the disclosure is a disclosure for treatment. A retained or appointed counsel has the right to obtain individually identifiable health information regarding a respondent in a proceeding under this chapter. In any other case, the right of an inmate or a patient to obtain protected health information must be in accordance with title 45, Code of Federal Regulations, part 164.

**SECTION 2. AMENDMENT.** Section 25-03.3-13 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.3-13. Sexually dangerous individual - Commitment proceeding - Report of findings.** Within sixty days after the finding of probable cause, the court shall conduct a commitment proceeding to determine whether the respondent is a sexually dangerous individual. The court may extend the time for good cause. At the commitment proceeding, any testimony and reports of an expert who conducted an examination are admissible, including risk assessment evaluations. Any proceeding pursuant to this chapter must be tried to the court and not a jury. At the commitment proceeding, the state's attorney shall present evidence in support of the petition and the burden is on the state to show by clear and convincing evidence that the respondent is a sexually dangerous individual. An individual may not be committed unless expert evidence is admitted establishing that at least two experts have concluded the individual has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes that individual likely to engage in further acts of sexually predatory conduct. The respondent has a right to be present, to testify, and to present and cross-examine witnesses. If the respondent is found to be a sexually dangerous individual, the court shall commit the respondent to the care, custody, and control of the executive director. The executive director shall place the respondent in an appropriate facility or program at which treatment is available. The appropriate treatment facility or program must be the least restrictive available treatment facility

or program necessary to achieve the purposes of this chapter. The executive director may not be required to create a less restrictive treatment facility or treatment program specifically for the respondent or committed individual. Unless the respondent has been committed to the legal and physical custody of the department of corrections and rehabilitation, the respondent may not be placed at and the treatment program for the respondent may not be provided at the state penitentiary or an affiliated penal facility. If the respondent is found not to be a sexually dangerous individual, the court shall discharge the respondent.

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

Approved April 3, 2007

Filed April 4, 2007

# INSURANCE

## CHAPTER 259

### SENATE BILL NO. 2067

(Industry, Business and Labor Committee)  
(At the request of the Insurance Commissioner)

## INTERNATIONAL INSURANCE REGULATOR DOCUMENT SHARING

AN ACT to amend and reenact section 26.1-03-11.3 of the North Dakota Century Code, relating to sharing of confidential documents with international insurance regulators.

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

**SECTION 1. AMENDMENT.** Section 26.1-03-11.3 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-03-11.3. Confidentiality.** The commissioner shall maintain, as confidential, any confidential documents or information received from the national association of insurance commissioners or state ~~or~~, federal, or international regulatory or law enforcement officials of this state and other states or jurisdictions. The information may not be disclosed by the department and is exempt from section 44-04-18. The commissioner may share information that is confidential under the laws of this state with the national association of insurance commissioners and with state ~~or~~, federal, or international regulatory or law enforcement officials from this state and other states or jurisdictions providing that the officials are required, under their law, to maintain its confidentiality.

Approved April 5, 2007  
Filed April 5, 2007



**CHAPTER 260****HOUSE BILL NO. 1155**

(Representative Price)  
(Senator J. Lee)

**CHAND COVERAGE**

AN ACT to amend and reenact sections 26.1-08-01 and 26.1-08-02.1, subdivisions h and j of subsection 2 of section 26.1-08-02.2, sections 26.1-08-06, 26.1-08-07, and 26.1-08-09, subsection 6 of section 26.1-08-10, subsections 3 and 4 of section 26.1-08-11, sections 26.1-08-12 and 26.1-08-13, and subsection 28 of section 26.1-36.3-01 of the North Dakota Century Code, relating to the comprehensive health association of North Dakota and to a definition applicable to small employer employee health insurance.

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

**SECTION 1. AMENDMENT.** Section 26.1-08-01 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-08-01. Definitions.** In this chapter, unless the context or ~~subject matter~~ otherwise requires:

1. "Association" means the comprehensive health association of North Dakota.
2. "Benefit plan" means insurance policy coverage offered by the association through the lead carrier.
3. "Benefit plan premium" means the charge for the benefit plan based on the benefits provided in section 26.1-08-06 and determined pursuant to section 26.1-08-08.
4. "Board" means the association board of directors.
5. "Credible Church plan" means a plan as defined under section 3(33) of the federal Employee Retirement Income Security Act of 1974.
6. "Creditable coverage" means, ~~with respect to an individual, coverage of the individual provided under:~~
  - a. ~~A group health plan;~~
  - b. ~~Health insurance;~~
  - c. ~~Part A or part B of title XVIII of the federal Social Security Act [42 U.S.C. 1395 et seq.], relating to health insurance for the aged and disabled;~~
  - d. ~~Title XIX of the federal Social Security Act [42 U.S.C. 1396 et seq.], relating to grants to states for medical assistance programs, with the exception of coverage consisting solely of benefits under~~

- section 1928 of the federal Social Security Act [Pub. L. 403-66; 407-637; 42 U.S.C. 1396s], relating to the program for distribution of pediatric vaccines;
- e. Chapter 55 of United States Code title 10 [10 U.S.C. 1071 et seq.], relating to armed forces medical and dental care;
  - f. A medical care program of the Indian health service or of a tribal organization;
  - g. A state health benefits risk pool;
  - h. A public health plan as defined in federal regulations;
  - i. A health plan offered under chapter 89 of United States Code title 5 [5 U.S.C. 8904 et seq.], relating to government employee health insurance; or
  - j. A benefit plan under section 5(e) of the federal Peace Corps Act [Pub. L. 87-293; 76 Stat. 613; 22 U.S.C. 2504(e)] has the same meaning as "qualifying previous coverage" as defined under section 26.1-36.3-01.
- 6- 7. "Eligible individual" means an individual eligible for association benefit plan coverage as specified under section 26.1-08-12.
- 7- 8. "Governmental plan" has the same meaning as provided under section 3(32) of the federal Employee Retirement Income Security Act of 1974 [Pub. L. 93-406; 88 Stat. 833; 29 U.S.C. 1002] and as may be provided under any federal governmental plan.
- 8- 9. "Group health plan" has the same meaning as employee welfare benefit plan as provided under section 3(1) of the federal Employee Retirement Income Security Act of 1974 [Pub. L. 93-406; 88 Stat. 833; 29 U.S.C. 1002] to the extent that the plan provides medical care, and including items and service paid for as medical care to employees or the employees' dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.
- 9- 10. "Health insurance coverage" means any hospital and medical expense-incurred policy, nonprofit health care service plan contract, health maintenance organization subscriber contract, or any other health care plan or arrangement that pays for or furnishes benefits that pay the costs of or provide medical, surgical, or hospital care or, if selected by the eligible individual, chiropractic care. ~~The term~~
- a. Health insurance coverage does not include any one or more of the following:
    - a- (1) Coverage only for accident, disability income insurance, or any combination of the two;
    - b- (2) Coverage issued as a supplement to liability insurance;
    - c- (3) Liability insurance, including general liability insurance and automobile liability insurance;

- ~~d.~~ (4) Workforce safety and insurance or similar insurance;
- ~~e.~~ (5) Automobile medical payment insurance;
- ~~f.~~ (6) Credit-only insurance;
- ~~g.~~ (7) Coverage for onsite medical clinics; and
- ~~h.~~ (8) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits;\_
- ~~i.~~ b. Health insurance coverage does not include the following benefits if they are provided under a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the plan:
  - (1) Limited scope dental or vision benefits;
  - ~~j.~~ (2) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination of this care; and
  - ~~k.~~ (3) Other similar limited benefits specified under federal regulations issued under the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104-191; 110 Stat. 1936; 29 U.S.C. 1181 et seq.];\_
- ~~i.~~ c. Health insurance coverage does not include any of the following benefits if the benefits are provided under a separate policy, certificate, or contract of insurance; there is no coordination between the provision of the benefits; any exclusion of benefits under any group health insurance coverage maintained by the same plan sponsor; and the benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same sponsor:
  - (1) Coverage only for specified disease or illness; and
  - ~~m.~~ (2) Hospital indemnity or other fixed indemnity insurance;\_
  - ~~n.~~ Medicare supplemental health insurance as defined under section ~~1392(g)(1)~~ of the federal Social Security Act [42 U.S.C. ~~1395c(g)(1)~~];
- ~~e.~~ d. Health insurance coverage does not include the following if offered as a separate policy, certificate, or contract of insurance:
  - (1) Coverage supplemental to the coverage provided under chapter 55 of United States Code title 10 [10 U.S.C. 1071 et seq.] relating to armed forces medical and dental care; or and
  - ~~p.~~ (2) Similar supplemental coverage provided under a group health plan.

- ~~40.~~ 11. "Insurer" means any insurance company, nonprofit health service organization, fraternal benefit society, health maintenance organization, and any other entity providing or selling health insurance coverage or health benefits that are subject to state insurance regulation.
- ~~44.~~ 12. "Lead carrier" means the insurance company selected by the board to administer the association benefit plans.
- ~~42.~~ 13. "Medicare" means coverage under both parts A and B of title XVIII of the federal Social Security Act [Pub. L. 89-97; 79 Stat. 291; 42 U.S.C. 1395 et seq.].
- ~~43.~~ 14. "Participating member" means any ~~insurance company insurer~~ that is licensed ~~or authorized to do business~~ in this state which has an annual earned premium volume of ~~accident and health insurance contracts coverage, including medicare supplemental health insurances as defined under section 1882(g)(1) of the federal Social Security Act [42 U.S.C. 1395ss(g)(1)],~~ derived from or on behalf of residents in the previous calendar year of at least one hundred thousand dollars.
- ~~44.~~ "Plan of health coverage" means any plan ~~or combination of plans of coverage, including combinations of individual policies or coverage under a nonprofit health service plan.~~
- ~~45.~~ "Policy" means insurance, health care plan, health benefit plan as defined in section ~~26.1-36.3-01, or nonprofit health service plan contracts providing benefits for hospital, surgical, and medical care.~~ Policy does not include coverage that 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 health insurance.~~
- ~~46.~~ "Qualified plan" means those health benefit plans certified by the commissioner as providing the minimum benefits required by section ~~26.1-08-06 for a qualified comprehensive plan, or section 26.1-08-06.1 for the age sixty-five and over and disabled supplements, or other plan developed by the board and certified by the commissioner as complying with the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104-191; 110 Stat. 1936; 29 U.S.C. 1184 et seq.].~~
- ~~47.~~ 15. "Resident" means an individual who has been a legal resident of this state for a minimum of one hundred eighty-three days, determined by applying section 54-01-26. However, for a federally defined eligible individual as defined under subdivision b of subsection 5 of section 26.1-08-12, there is no minimum ~~length~~ of residency requirement. The board may waive the residency requirement upon a showing of good cause.

- ~~48-~~ 16. "Significant break in coverage" means a period of sixty-three or more consecutive days during all of which the individual does not have ~~any~~ ~~ereditble~~ creditable coverage. Neither a waiting period nor an affiliation period is taken into account in determining a significant break in coverage.
- ~~49-~~ 17. "Trade adjustment assistance, pension benefit guarantee corporation individual" means an individual who is certified as eligible for federal trade adjustment assistance or federal pension benefit guarantee corporation assistance as provided by the federal Trade Adjustment Assistance Reform Act of 2002 [Pub. L. 107-210; 116 Stat. 933], the spouse of such an individual, or a dependent of such an individual as provided under the federal Internal Revenue Code.

**SECTION 2. AMENDMENT.** Section 26.1-08-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-08-02.1. Board of directors.**

1. The board consists of the commissioner; the state health officer; the director of the office of management and budget; one senator appointed by the majority leader of the senate of the legislative assembly; one representative appointed by the speaker of the house of representatives of the legislative assembly; and one individual from each of the three participating member insurance companies of the association with the highest annual premium volumes of ~~accident and~~ contracts coverage as provided by the commissioner, verified by the lead carrier, and approved by the board.
2. Members of the board may be reimbursed from the moneys of the association for expenses incurred by the members due to their service as board members, but may not otherwise be compensated by the association for board services.
3. The costs of conducting the meetings of the association and the board ~~is~~ are borne by the association.
4. The commissioner shall fill vacancies and, for cause, may remove any board member representing one of the three participating member insurance companies.

**SECTION 3. AMENDMENT.** Subdivisions h and j of subsection 2 of section 26.1-08-02.2 of the North Dakota Century Code are amended and reenacted as follows:

- h. Develop and implement a program to publicize the existence of the association, the eligibility ~~requirement~~ requirements, and procedures for enrollment and to maintain public awareness of the association;
- j. Exempt, by a two-thirds majority vote, an applicant from the preexisting condition provisions of subsection ~~40~~ 13 of section 26.1-08-12 when required under emergency circumstances to allow the applicant access to medical procedures determined to be necessary to preserve life; and

**SECTION 4. AMENDMENT.** Section 26.1-08-06 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-08-06. Comprehensive benefit plan.**

- ~~1.~~ 1. A plan of health coverage is a qualified comprehensive plan if it otherwise meets the requirements established by chapters ~~26.1-36 and 26.1-36.4~~ and the other laws of the state.
- ~~2.~~ 2. The benefit plan must offer comprehensive health care coverage to every eligible individual. The coverage to be issued by the association, its schedule of benefits, exclusions, and other limitations must be established by the lead carrier and subject to the approval of the board.
- ~~3.~~ 2. In establishing the benefit plan coverage, the board shall take into consideration the levels of health insurance coverage provided in the state and medical economic factors as may be deemed appropriate. Benefit levels, deductibles, coinsurance factors, copayments, exclusions, and limitations may be applied as determined to be generally reflective of health insurance coverage provided in the state.
- ~~4.~~ 3. The coverage may include deductibles of not less than five hundred dollars per individual per benefit period.
- ~~5.~~ 4. The coverage must include a limitation of not less than three thousand dollars per individual on the total annual out-of-pocket expenses for services covered under this subsection.
- ~~6.~~ 5. Any coverage or combination of coverages through the association may not exceed a lifetime maximum benefit of one million dollars for an individual.
- ~~7.~~ 6. The coverage may include cost-containment measures and requirements, including preadmission screening, second surgical opinion, concurrent utilization review, and individual case management for the purpose of making the benefit plan more cost-effective.
- ~~8.~~ 7. The coverage may include preferred provider organizations, health maintenance organizations, and other limited network provider arrangements.
- ~~9.~~ 8. Coverage must include 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.
- ~~40.~~ 9. Coverage must include substance abuse and mental disorders as outlined in sections 26.1-36-08 and 26.1-36-09.
- ~~44.~~ 10. Covered expenses must include, at the option of the eligible individual, professional services rendered by a chiropractor and for services and articles prescribed by a chiropractor for which an additional premium may be charged.
- ~~42.~~ 11. The coverage must include organ transplants as approved by the board.

- ~~43.~~ 12. The association must be payer of last resort of benefits whenever any other benefit or source of third-party payment is available. Benefits otherwise payable under an association benefit plan must be reduced by all amounts paid or payable through any other health insurance coverage and by all hospital and medical expense benefits paid or payable under any workforce safety and insurance coverage, automobile medical payment or liability insurance whether provided on the basis of fault or no fault, and by any hospital or medical benefits paid or payable under or provided pursuant to any state or federal law or program. The association must have a cause of action against an eligible individual for the recovery of the amount of benefits paid that are not for covered expenses. Benefits due from the association may be reduced or refused as a setoff against any amount recoverable under this subsection.

**SECTION 5. AMENDMENT.** Section 26.1-08-07 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-08-07. Approval and filing of benefit plans.** The lead carrier shall file with the commissioner, ~~following approval from the board,~~ all benefit plans, ~~brochures,~~ and other ~~materials~~ forms required to be approved ~~to be offered under this chapter.~~ The commissioner shall approve or disapprove any form within sixty days of receipt.

**SECTION 6. AMENDMENT.** Section 26.1-08-09 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-08-09. Participating members.**

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 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 members.~~
2. All participating members shall maintain their membership in the association, as a condition for writing policies in this state.
3. Each participating member of the association ~~which is liable for state income tax or state premium tax~~ shall share the losses due to claims and administrative expenses of the association. The difference between the total claims expense of the association and the benefit plan premiums received is the liability of the participating members. Such participating members shall share in the excess costs of the association in an amount equal to the ratio of a participating member's total annual premium volume for ~~accident and~~ health insurance received from or on behalf of state residents, to the total ~~accident and~~ health insurance premium volume received by all of the participating members as determined by the lead carrier and approved by the board. For determining the liability of participating members, health insurance coverage includes medicare supplemental health insurance as defined under section 1882(g)(1) of the federal Social Security Act [42 U.S.C. 1395ss(g)(1)] but does not include federal employees health benefits plans or medicare part C plans.

4. 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 lead carrier on behalf of the association the full amount assessed within thirty days of notification by the lead carrier is grounds for termination of membership.

**SECTION 7. AMENDMENT.** Subsection 6 of section 26.1-08-10 of the North Dakota Century Code is amended and reenacted as follows:

6. The lead carrier shall:
  - a. Perform all administrative and claims payment functions required under this chapter.
  - b. Determine eligibility of individuals requesting coverage through the association.
  - c. Provide all eligible individuals involved in the association an individual certificate setting forth a statement as to the insurance protection to which the individual is entitled, the method and place of filing claims, and to whom benefits are payable. The certificate must indicate that coverage was obtained through the association.
  - d. Pay all claims under this chapter and indicate that the association paid the claims. Each claim payment must include information specifying the procedure involved in the event a dispute over the amount of payment arises.
  - e. Establish a premium billing procedure for collection of premium from individuals covered by the association.
  - f. Obtain approval from the board for all benefit plan premiums and benefit plans issued.
  - g. Submit regular reports to the board regarding the operation of the association.
  - h. Submit to the participating companies and board, on a semiannual basis, a report of the operation of the association.
  - i. Verify premium volumes of all ~~accident and~~ health insurers in the state.
  - j. Determine and collect assessments.
  - k. Perform such functions relating to the association as may be assigned to it.

**SECTION 8. AMENDMENT.** Subsections 3 and 4 of section 26.1-08-11 of the North Dakota Century Code are amended and reenacted as follows:

3. All licensed accident and health insurance producers may engage in the selling or marketing of ~~qualified~~ association benefit plans. The lead carrier shall pay ~~an insurance producer's~~ a referral fee to each licensed accident and health insurance ~~insurance~~ producer 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 benefit plan.

4. Every insurance company that rejects or applies underwriting restrictions to an applicant for ~~accident and~~ health insurance shall notify the applicant of the existence of the association, requirements for being accepted in it, and the procedure for applying to it.

**SECTION 9. AMENDMENT.** Section 26.1-08-12 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-08-12. Eligibility.**

1. The association must be open for enrollment by eligible individuals. Eligible individuals shall apply for enrollment in the association by submitting an application to the lead carrier. The application must:
  - a. Provide the name, address, and age of the applicant.
  - b. Provide the length of applicant's residence in this state.
  - c. Provide the name, address, and age of spouse and children, if any.
  - d. Provide a designation of coverage desired.
  - e. Be accompanied by premium and evidence to prove eligibility.
2. Within thirty days of receipt of the application, the lead carrier shall either reject the application for failing to comply with the requirements of this section or forward the eligible individual a notice of acceptance and billing information. ~~insurance~~
3. At the option of the eligible individual, association coverage is effective retroactive to the date of the application or the day following the date shown on the written rejection or refusal, if the applicant otherwise complies with this chapter:
  - a. For an eligible individual applying under subsection 10 or 11, on the signature date of the application.
  - b. For an eligible individual applying under subparagraph a of paragraph 1 of subdivision a of subsection 5 or under subparagraph a of paragraph 1 of subdivision c of subsection 5:
    - (1) On the day following the date shown on the written evidence;
    - (2) On the signature date of the application, if it is at least one day and less than one hundred eighty days following the date shown on the written evidence; or
    - (3) On any date after the signature date of the application if the date is at least one day and less than one hundred eighty days following the date shown on the written evidence.
  - c. For an eligible individual applying under subparagraph b or c of paragraph 1 of subdivision a of subsection 5 or under

subparagraph b or c of paragraph 1 of subdivision c of subsection 5:

- (1) On the signature date of the application; or
- (2) On any date after the signature date of the application but less than one hundred eighty days following the date shown on the written evidence.

d. For an eligible individual applying under subdivision b or d of subsection 5:

- (1) On the signature date of the application; or
- (2) On any date after the signature date of the application, but less than sixty-four days following termination of previous coverage.

e. For an eligible individual applying under subsection 6:

- (1) On the signature date of the application; or
- (2) On any date after the signature date of the application, but less than one hundred eighty days following the date shown on the written evidence from a medical professional.

~~3.~~ 4. An eligible individual may not purchase more than one policy from the association.

~~4.~~ 5. An individual may qualify to enroll in the association for benefit plan coverage as:

a. ~~A standard~~ traditional applicant:

- (1) An individual who has been a resident of this state and continues to be a resident of the state who has received from at least one insurance carrier within one hundred eighty days of the date of application, one of the following:
  - (a) Written evidence of rejection or refusal to issue substantially similar insurance for health reasons by one insurer.
  - (b) Written evidence that a restrictive rider or a preexisting condition limitation, the effect of which is to reduce substantially, coverage from that received by an individual considered a standard risk, has been placed on the individual's policy.
  - (c) ~~Refusal by~~ Written evidence that an insurer has offered to issue comparable insurance ~~except at the a~~ rate exceeding the association benefit rate.
- (2) ~~Is not eligible for~~ enrolled in health benefits with the state's medical assistance program.

- b. A Health Insurance Portability and Accountability Act of 1996 applicant:
- (1) An individual who meets the federally defined eligibility guidelines as follows:
    - (a) Has had eighteen months of qualifying previous coverage as defined in section 26.1-36.3-01, the most recent of which is covered under a group health plan, governmental plan, medicaid, or church plan;
    - (b) Has applied for coverage under this chapter within sixty-three days of the termination of the qualifying previous coverage;
    - (c) Is not eligible for coverage under medicare or a group health benefit plan as the term is defined in section 26.1-36.3-01; ~~medicare, or medicaid~~;
    - (d) Does not have any other health insurance coverage;
    - (e) Has not had the most recent qualifying previous coverage described in subparagraph a terminated for nonpayment of premiums or fraud; and
    - (f) If offered under the option, has elected continuation coverage under the federal Consolidated Omnibus Budget Reconciliation Act [Pub. L. 99-272; 100 Stat. 82], or under a similar state program, and that coverage has exhausted.
  - (2) Is and continues to be a resident of the state.
  - (3) Is not ~~eligible for~~ enrolled in health benefits with the state's medical assistance program.
- c. An applicant age sixty-five and over or disabled:
- (1) An individual who is eligible for medicare by reason of age or disability and has been a resident of this state and continues to be a resident of this state who has received from at least one insurance carrier within one hundred eighty days of the date of application, one of the following:
    - (a) Written evidence of rejection or refusal to issue substantially similar insurance for health reasons by one insurer.
    - (b) Written evidence that a restrictive rider or a preexisting condition limitation, the effect of which is to reduce substantially, coverage from that received by an individual considered a standard risk, has been placed on the individual's policy.

- (c) ~~Refusal by~~ Written evidence that an insurer has offered to issue comparable insurance except at the a rate exceeding the association benefit rate.
  - (2) Is not ~~eligible for~~ enrolled in health benefits with the state's medical assistance program.
- d. A Trade Adjustment Assistance Reform Act of 2002 applicant:
- (1) A trade adjustment assistance, pension benefit guarantee corporation individual applicant who:
    - (a) Has three or more months of previous health insurance coverage at the time of application;
    - (b) Has applied for coverage within sixty-three days of the termination of the individual's previous health insurance coverage;
    - (c) Is and continues to be a resident of the state;
    - (d) Is not enrolled in the state's medical assistance program;
    - (e) ~~Is not an inmate or a resident of a public institution imprisoned under federal, state, or local authority;~~ and
    - (f) Does not have health insurance coverage through:
      - [1] The applicant's or spouse's employer if the coverage provides for employer contribution of fifty percent or more of the cost of coverage of the spouse, the eligible individual, and the dependents or the coverage is in lieu of an employer's cash or other benefit under a cafeteria plan.
      - [2] A state's children's health insurance program, as defined under section 50-29-01.
      - [3] A government plan.
      - [4] Chapter 55 of United States Code title 10 [10 U.S.C. 1071 et seq.] relating to armed forces medical and dental care.
      - [5] Part A or part B of title XVIII of the federal Social Security Act [42 U.S.C. 1395 et seq.] relating to health insurance for the aged and disabled.
  - (2) Coverage under this subdivision may be provided to an individual who is eligible for health insurance coverage through the federal Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99-272; 100 Stat. 82]; a spouse's employer plan in which the employer contribution is less than fifty percent; or the individual marketplace,

including continuation or guaranteed issue, but who elects to obtain coverage under this subdivision.

- ~~5-~~ 6. The board and lead carrier shall develop a list of medical or health conditions for which an individual must be eligible for association coverage without applying for health insurance coverage under subdivisions a and c of subsection 4 5. Individuals with written evidence of the existence or history of any medical or health conditions on the approved list may not be required to provide written evidence of rejection, or refusal, a rate that exceeds the association rates, or substantially reduced coverage.
- ~~6-~~ 7. A rejection or refusal by an insurer offering only stop loss, excess of loss, or reinsurance coverage with respect to an applicant under subdivisions a and c of subsection 4 is not sufficient evidence to qualify.
- ~~7-~~ An eligible individual
8. A traditional applicant, as specified under subdivision a of subsection 5, may have insurance coverage, other than the state's medical assistance program, with an additional commercial insurer; however, the association will reimburse eligible claim costs as payer of last resort.
9. An individual who is eligible for association coverage as specified under subdivision c of subsection 5 may not have more than one policy that is a supplement to part A or part B of medicare relating to health insurance for the aged and disabled. The individual may obtain association coverage as a traditional applicant as specified under subdivision a of subsection 5 which is concurrent with a supplement policy offered by a commercial carrier. However, the association will reimburse eligible claims as payer of last resort.
- ~~8-~~ 10. Each resident dependent of an individual who is eligible for association coverage is also eligible for association coverage.
- ~~9-~~ 11. Each spouse of an individual who is eligible for association coverage with a preexisting maternity condition is also eligible for association coverage.
12. A newly born child without health insurance coverage is covered through the mother's association benefit plan for the first thirty-one days following birth. Continued coverage through the association for the child will be provided if the association receives an application and the appropriate premium within thirty-one days following the birth.
- ~~40-~~ 13. Preexisting conditions.
- a. Association coverage must exclude charges or expenses incurred during the first one hundred eighty days following the effective date of coverage for any condition for which medical advice, diagnosis, care, or treatment was recommended or received during the one hundred eighty days immediately preceding the signature date of the application.

- b. Association coverage must exclude charges or expenses incurred for maternity during the first two hundred seventy days following the effective date of coverage.
  - c. Any individual with coverage through the association due to a catastrophic condition or major illness who is also pregnant at the time of application is eligible for maternity benefits after the first one hundred eighty days of coverage.
  - d. A preexisting condition may not be imposed on an individual who is eligible under subdivision b or d of subsection 4 5.
- 44- 14. Waiting periods do not apply to an individual who:
- a. Is receiving nonelective treatment or procedures for a congenital or genetic disease.
  - b. ~~Is receiving nonelective treatment or procedures and has lost dependent status under a parent's or guardian's policy that has been in effect for the twelve-month period immediately preceding the date of the application.~~
  - e. Has obtained coverage as a federally eligible individual as defined in subdivision b of subsection 4 5.
  - ~~d.~~ c. Has obtained coverage as an eligible person under subdivision a or c of subsection 4 5, allowing for a reduction in waiting period days by the aggregate period of qualifying previous coverage in the same manner as provided in subsection 3 of section 26.1-36.3-06 and provided the association application is made within sixty-three days of termination of the qualifying previous coverage.
  - e. d. Has obtained coverage as an eligible individual under subdivision d of subsection 4 5.
- 42- 15. An individual is not eligible for coverage through the association if:
- a. The individual is ~~determined to be eligible for health care benefits under~~ enrolled in health benefits with the state's medical assistance program.
  - b. The individual has previously terminated association coverage unless twelve months have lapsed since such termination. This limitation does not apply to an applicant who is a federally defined eligible individual as defined under subdivision b of subsection 5.
  - c. The association has paid out one million dollars in benefits on behalf of the individual.
  - d. The individual is ~~an inmate or resident of a public institution imprisoned under federal, state, or local authority~~. This limitation does not apply to an applicant who is a federally defined eligible individual as defined under subdivision b of subsection 5.

- e. The individual's premiums are paid for or reimbursed under any government-sponsored program, government agency, health care provider, nonprofit charitable organization, or the individual's employer. However, this subdivision does not apply if the individual's premiums are paid for or reimbursed under a program established under the federal Trade Adjustment Assistance Reform Act of 2002 [Pub. L. 107-210; 116 Stat. 933].

- ~~13.~~ 16. A period of ~~credible~~ creditable coverage is not counted with respect to the enrollment of an individual who seeks coverage under this chapter if after such period and before the enrollment date, the individual experiences a significant break in coverage which is more than sixty-three days.

**SECTION 10. AMENDMENT.** Section 26.1-08-13 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-08-13. Termination of coverage.** The coverage of an individual who ceases to meet the eligibility requirements of this chapter may be terminated at the end of the policy period for which the necessary premiums have been paid. Coverage under this chapter terminates:

1. Upon request of the covered individual.
2. For failure to pay the required premium subject to a thirty-one-day grace period.
3. When the one million dollar lifetime maximum benefit amount has been reached.
4. If the covered individual ~~qualifies for~~ is enrolled in health benefits under the state's medical assistance program.
5. If the covered individual ~~physically resides outside this state for more than one hundred eighty-two days of each calendar year~~ is no longer a legal resident of this state, except for an individual who is absent from the state for a verifiable medical or other reason as determined by the board.
6. At the option of the plan, thirty days after the plan makes an inquiry concerning the individual's eligibility or place of residence to which the individual does not reply.

**SECTION 11. AMENDMENT.** Subsection 28 of section 26.1-36.3-01 of the North Dakota Century Code is amended and reenacted as follows:

28. "Qualifying previous coverage" and "qualifying existing coverage" mean, with respect to an individual, health benefits or coverage provided under any of the following:
  - a. A group health benefit plan;
  - b. A health benefit plan;
  - c. Medicare;

- d. Medicaid;
- e. Civilian health and medical program for uniformed services;
- f. A medical care program of the Indian health service or of a tribal organization;
- g. A state health benefit risk pool, including coverage issued under chapter 26.1-08;
- h. A health plan offered under 5 U.S.C. 89;
- i. A public health plan as defined in federal regulations, including a plan maintained by a state government, the United States government, or a foreign government; ~~and~~
- j. A health benefit plan under section 5(e) of the Peace Corps Act [Pub. L. 87-293; 75 Stat. 612; 22 U.S.C. 2504(e)]; and
- k. A state's children's health insurance program funded through title XXI of the federal Social Security Act [42 U.S.C. 1397aa et seq.].

The term "qualifying previous coverage" does not include coverage of benefits excepted from the definition of a "health benefit plan" under subsection 17.

Approved April 9, 2007  
Filed April 10, 2007



**CHAPTER 261****SENATE BILL NO. 2171**

(Senators Tollefson, Klein)  
(Representative Ruby)

**COUNTY MUTUAL INSURANCE COMPANY OFFICE  
LOCATION**

AN ACT to amend and reenact subsection 1 of section 26.1-13-12 of the North Dakota Century Code, relating to the location of a county mutual insurance company's principal office.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 26.1-13-12 of the North Dakota Century Code is amended and reenacted as follows:

1. The principal office of the company must be located within the ~~limits of the county or counties in which the incorporators reside~~ company's approved territory of operation.

Approved April 5, 2007  
Filed April 5, 2007

**CHAPTER 262****HOUSE BILL NO. 1274**

(Representatives Carlson, Dahl, Price)  
(Senators Holmberg, Krebsbach, Oehlke)

**NONPROFIT MUTUAL INSURANCE COMPANY  
DIVIDEND PAYMENTS**

AN ACT to amend and reenact subsection 3 of section 26.1-17-33.1 of the North Dakota Century Code, relating to the payment of dividends by a nonprofit mutual insurance company.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 26.1-17-33.1 of the North Dakota Century Code is amended and reenacted as follows:

3. The nonprofit corporation laws apply to the operation and control of a nonprofit mutual insurance company converted from a nonprofit health service corporation under this section and supersede any conflicting provisions in title 26.1 unless title 26.1 is more restrictive. Except as authorized in subsections 4 and 5, a nonprofit mutual insurance company may not sell, lease, transfer, or dispose of all or substantially all property or assets, and may not merge or consolidate with, or acquire, a stock insurance company or agency, for-profit subsidiary, or any other corporation. Except as provided in subsection 5, a nonprofit mutual insurance company may not ~~pay dividends or~~ issue stock.

Approved March 29, 2007

Filed March 30, 2007

**CHAPTER 263****SENATE BILL NO. 2411**

(Senators Warner, O'Connell)  
(Representative S. Kelsch)

**HOBBY BOILER OPERATOR LICENSING AND FEES**

AN ACT to amend and reenact sections 26.1-22.1-09 and 26.1-22.1-14 of the North Dakota Century Code, relating to hobby boiler operator licensing and fees.

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

**SECTION 1. AMENDMENT.** Section 26.1-22.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-22.1-09. Inspection and certificate fees.** Upon completion of inspection, the owner or user of a boiler shall pay to the commissioner fees or a combination of inspection and certificate fees. Inspection fees must be determined by the commissioner. Certificate fees are determined by section 26.1-22.1-10. The commissioner must determine and may annually adjust a fee scale for the internal inspections of power boilers, internal inspections of low pressure heating boilers, external inspections of all boilers, and inspection of boilers used exclusively for exhibition purposes.

Not more than one hundred fifty dollars may be charged or collected for any one inspection of a boiler except for special inspections made upon request. Not more than seventy-five dollars may be charged or collected for any one inspection of a steam traction engine except for special inspections made upon request. All other inspections made by the chief boiler inspector, including shop inspections and reviews and special inspections when requested by the owner or user of a boiler, must be charged at a rate not to exceed three hundred fifty dollars per day or two hundred dollars per half day of four hours or less, plus payment for mileage, meals, and hotel expenses as allowed by sections 44-08-04 and 54-06-09, except that the mileage rate for a state-owned vehicle will be the actual amount incurred by the commissioner. The annual fee for the issuance of a reciprocal commission card for a special inspector is twenty-five dollars and the annual fee for the issuance of a welder-qualified card is ten dollars. The fee for taking an examination for a hobby boiler operating license is twenty-five dollars and the fee for a hobby boiler operating license is twenty-five dollars. A hobby boiler operating license issued under this section is valid for six years.

**SECTION 2. AMENDMENT.** Section 26.1-22.1-14 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-22.1-14. Rules - Penalty for violation - Hearing.** The commissioner shall adopt rules for the safe and proper installation, use, operation, and inspection of boilers and pressure vessels subject to this chapter. The commissioner shall adopt rules for the licensing of operators of hobby boilers used during parades, exhibitions, and threshing shows where the public is invited. A fee must be charged for an operating license, for a license renewal, and for an examination conducted to determine minimum competence. Individuals operating hobby boilers within this state as of July 1, 2007, are considered acceptable for a license without additional training or examination. An individual who is not a resident of this state and who

holds a boiler operator license or credential in another state or Canadian province is exempt from licensure as a hobby boiler operator in this state. The commissioner may not issue a certificate of inspection to any owner or user of a boiler who fails or refuses to comply with those rules. The commissioner shall revoke any certificate presently in force upon evidence that the owner or user of the boiler is failing or refusing to comply with the rules.

Any owner or user of a boiler may request a hearing before the commissioner within fifteen days from service of an order refusing or revoking a certificate of inspection. It is the burden of the owner or user to show cause why the certificate of inspection should not be refused or revoked. If no hearing is requested within the required period, the order of the commissioner becomes final and is not subject to further proceedings.

Approved April 13, 2007  
Filed April 16, 2007

**CHAPTER 264****SENATE BILL NO. 2296**

(Senators Wanzek, Erbele, Grindberg)  
(Representatives Dietrich, Ruby, Vigasaa)

**INSURANCE DEFINITIONS AND RATE FILINGS**

AN ACT to amend and reenact sections 26.1-25-02.1 and 26.1-25-04 of the North Dakota Century Code, relating to the definitions of noncompetitive market, insurance company rate filings, and policy forms.

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

**SECTION 1. AMENDMENT.** Section 26.1-25-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-25-02.1. Definitions.**

1. "Advisory organization" means any entity, including its affiliates or subsidiaries, which either has two or more member insurers or is controlled either directly or indirectly by two or more insurers, and which assists insurers in ratemaking-related activities as enumerated in this chapter. Two or more insurers having a common ownership or operating in this state under common management or control constitute a single insurer for purposes of this definition.
2. "Commercial risk" means any kind of risk which is not a personal risk.
3. "Competitive market" means a commercial risk market that has not been found to be noncompetitive as provided for in section 26.1-25-04. All commercial risk markets except crop hail, farmowners, and medical malpractice insurance are presumed to be competitive.
4. "Developed losses" means losses including loss adjustment expenses, adjusted, using standard actuarial techniques, to eliminate the effect of differences between current payment or reserve estimates and those needed to provide actual ultimate loss including loss adjustment expense payments.
4. 5. "Expenses" means that portion of a rate attributable to acquisition, field supervision, collection expenses, general expenses, taxes, licenses, and fees.
5. 6. "Joint underwriting" means a voluntary arrangement established to provide insurance coverage for a commercial risk pursuant to which two or more insurers jointly contract with the insured at a price and under policy terms agreed upon between the insurers.
6. 7. "Loss trending" means any procedure for projecting developed losses to the average date of loss for the period during which the policies are to be effective.

- ~~8.~~ 8. "Noncompetitive market" means the crop hail, farmowners, and medical malpractice insurance markets together with any other line of commercial risk insurance that has not been found by the commissioner to have a reasonable degree of competitiveness within the market considering:
- a. Market concentration and changes in market concentration determined through the use of the herfindahl-hirschman index and the United States department of justice merger guidelines for an unconcentrated market;
  - b. The existence of financial and other barriers that prevent a company from entering the market;
  - c. The number of insurers or groups of affiliated insurers providing coverage in the market;
  - d. The extent to which any insurer or group of affiliated insurers controls the market;
  - e. Whether the total number of companies writing the line of insurance in this state is sufficient to provide multiple insurance options in the market;
  - f. The availability of insurance coverage to consumers in the markets by specific geographic area, by line of insurance, and by class of risk; and
  - g. The opportunities available in the market to acquire pricing and other consumer information.
- A determination that a market is noncompetitive may not be based solely on the consideration of any one factor.
- ~~7.~~ 9. "Personal risk" means homeowners, tenants, private passenger nonfleet automobiles, mobile homes, and other property and casualty insurance for personal, family, or household needs.
- ~~8.~~ 10. "Pool" means a voluntary arrangement, established on an ongoing basis, pursuant to which two or more insurers participate in the sharing of risks on a predetermined basis. The pool may operate through an association, syndicate, or other pooling agreement.
- ~~9.~~ 11. "Prospective loss costs" means that portion of a rate that does not include provisions for expenses other than loss adjustment expenses, or profit, and are based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.
- ~~40.~~ 12. "Rate" means that cost of insurance per exposure unit whether expressed as a single member or as a prospective loss cost with an adjustment to account for the treatment of expenses, profit, and individual insurer variation in loss experience, prior to any application of individual risk variations based on loss or expense considerations, and does not include minimum premium.

- ~~44-~~ 13. "Residual market mechanism" means an arrangement, either voluntary or mandated by law, involving participation by insurers in the equitable apportionment among them of insurance which may be afforded applicants who are unable to obtain insurance through ordinary methods.
- ~~42-~~ 14. "Supplementary rating information" includes any manual or plan of rates, classification, rating schedule, minimum premium, policy fee, rating rule, underwriting rule, statistical plan, and any other similar information needed to determine the applicable rate in effect or to be in effect.
- ~~43-~~ 15. "Supporting information" means:
- a. The experience and judgment of the filer and the experience or date of other insurers or advisory organizations relied upon by the filer;
  - b. The interpretation of any other data relied upon by the filer; and
  - c. Descriptions of methods used in making the rates and any other information required by the commissioner to be filed.

**SECTION 2. AMENDMENT.** Section 26.1-25-04 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-25-04. Rate filings.**

1. Every insurer shall file with the commissioner, except as to inland marine risks which by general custom of the business are not written according to manual rates or rating plans, every manual, minimum class rate, rating schedule or rating plan, and every other rating rule, and every modification of any of the foregoing which it proposes to use. Every filing must state the proposed effective date thereof and must indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the insurer supports the filing, and the commissioner does not have sufficient information to determine whether the filing meets the requirements of this chapter, the commissioner shall require the insurer to furnish the information upon which it supports the filing and the waiting period commences as of the date the information is furnished. Every insurer shall file or incorporate by reference to material which has been approved by the commissioner, at the same time as the filing of the rate, all supplementary rating and supporting information to be used in support of or in conjunction with a rate. The information furnished in support of a filing may include:
  - a. The experience or judgment of the insurer or advisory organization making the filing.
  - b. Its interpretation of any statistical data upon which it relies.
  - c. The experience of other insurers or advisory organizations.
  - d. Any other relevant factors.

A filing and any supporting information is open to public inspection after the filing becomes effective. Specific inland marine rates on risks specially rated, made by an advisory organization, must be filed with the commissioner.

2. After reviewing an insurer's filing, the commissioner may require that the insurer's rates be based upon the insurer's own loss and expense information. If the insurer's loss or allocated loss adjustment expense information is not actuarially credible, as determined by the commissioner, the insurer may use or supplement its experience with information filed with the commissioner by an advisory organization. Insurers utilizing the services of an advisory organization must provide with their rate filing, at the request of the commissioner, a description of the rationale for such use, including its own information and method of utilization of the advisory organization's information. This chapter does not require any insurer to become a member of or a subscriber to any advisory organization.
3. The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this chapter.
4. Subject to the exceptions specified in ~~subsection~~ subsections 5 and 6, each filing must be on file for a waiting period of sixty days before it becomes effective. The period may be extended by the commissioner for an additional period not to exceed fifteen days if the commissioner gives written notice within the waiting period to the insurer or advisory organization which made the filing that the commissioner needs the additional time for the consideration of the filing. Upon written application by the insurer or advisory organization, the commissioner may authorize a filing which the commissioner has reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing is deemed to meet the requirements of this chapter unless disapproved by the commissioner within the waiting period or any extension thereof.
5. ~~Any special A filing with respect to a surety or guaranty bond required by law or by court or executive order or by order or rule of a public body, not covered by a previous filing, becomes effective when filed and competitive market commercial risk rate filing, a private passenger automobile rate filing in which the average rate change is less than five percent, or a homeowner rate filing in which the average rate change is less than five percent~~ is deemed to meet the requirements of this chapter until such time as the commissioner reviews the filing and so long thereafter as the filing remains in effect. Specific inland marine rates on risks specially rated by an advisory organization become effective when filed and are deemed to meet the requirements of this chapter until such time as the commissioner reviews the filing and so long thereafter as the filing remains in effect.
6. An insurer must file notice of a rate change for either a competitive market commercial risk product, a private passenger automobile rate filing in which the average rate change is less than five percent, or a homeowner rate filing in which the average rate change is less than five percent with the commissioner within thirty days after implementing the rate change. The exemption provided in subsection 5 for a private



passenger automobile or homeowner rate change filing is limited to no more than one filing per calendar year.

- ~~7.~~ 7. The commissioner after notice and hearing may determine by order that a commercial risk market is noncompetitive. A rate filing for a product in a noncompetitive commercial risk market is subject to the provisions of chapter 26.1-25. The commissioner's order finding that a commercial risk market is noncompetitive expires after two years.
- ~~8.~~ 8. Under any rules the commissioner may adopt, the commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision, or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. The orders and rules must be made known to insurers and advisory organizations affected thereby. The commissioner may make any examination the commissioner deems advisable to ascertain whether any rates affected by the order meet the standards set forth in subdivision e of subsection 1 of section 26.1-25-03.
- ~~7.~~ 9. Upon the written application of the insured, stating the insured's reasons therefor, filed with and approved by the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.
- ~~8.~~ 10. No insurer may make or issue a contract or policy except in accordance with the filings that have been approved and are in effect for the insurer as provided in this chapter or in accordance with subsection ~~6~~ 8 or ~~7~~ 9.
- ~~9.~~ 11. Nothing in this chapter may be construed to require an advisory organization or its members or its subscribers to immediately refile final rates or premium charges previously approved by the commissioner. Members or subscribers of an advisory organization are authorized to continue to use insurance rates or premium charges approved before July 1, 1991, or decreases from those rates or premium charges filed by the advisory organization and subsequently approved after July 1, 1991.

Approved May 4, 2007

Filed May 4, 2007

**CHAPTER 265****SENATE BILL NO. 2065**

(Industry, Business and Labor Committee)  
(At the request of the Insurance Commissioner)

**INSURANCE PRODUCER EDUCATION**

AN ACT to amend and reenact subsection 1 of section 26.1-26-13.3 of the North Dakota Century Code, relating to elimination of mandatory prelicensing education requirements for insurance producers.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 26.1-26-13.3 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual applying for a resident insurance producer license shall make application to the commissioner on the uniform application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner must find that the individual:
  - a. Is at least eighteen years of age;
  - b. Has not committed any act that is a ground for denial, suspension, or revocation set forth in section 26.1-26-42;
  - c. ~~Has completed, within six months of the filing of the application for licensure, an approved prelicensing course of study for the lines of authority for which the individual has applied;~~
  - d. Has paid the fees set forth in section 26.1-01-07; and
  - e. d. Has successfully passed the examinations for the lines of authority for which the individual has applied.

Approved March 7, 2007  
Filed March 8, 2007

**CHAPTER 266****SENATE BILL NO. 2268**

(Senators Klein, Hacker, Heitkamp)  
(Representatives Ekstrom, N. Johnson, Keiser)

**VIATICAL SETTLEMENT CONTRACTS**

AN ACT to create and enact chapter 26.1-33.3 of the North Dakota Century Code, relating to viatical settlement contracts; to amend and reenact subdivision a of subsection 21 of section 10-04-02 of the North Dakota Century Code, relating to the definition of viatical settlement contract; to repeal chapter 26.1-33.2 of the North Dakota Century Code, relating to viatical settlement contracts; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subdivision a of subsection 21 of section 10-04-02 of the North Dakota Century Code is amended and reenacted as follows:

- a. The assignment, transfer, sale, devise, or bequest of a death benefit, life insurance policy, or certificate of insurance by the viator to the viatical settlement provider pursuant to chapter ~~26.1-33.2~~ 26.1-33.3;

**SECTION 2.** Chapter 26.1-33.3 of the North Dakota Century Code is created and enacted as follows:

**26.1-33.3-01. Definitions.**

1. "Advertising" means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the internet, or similar communications media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed directly before the public, in this state, for the purpose of creating an interest in or inducing a person to sell, assign, devise, bequest, or transfer the death benefit or ownership of a life insurance policy pursuant to a viatical settlement contract.
2. "Business of viatical settlements" means an activity involved in, but not limited to, the offering, soliciting, negotiating, procuring, effectuating, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating, or in any other manner, acquiring an interest in a life insurance policy by means of a viatical settlement contract.
3. "Chronically ill" means:
  - a. Being unable to perform at least two activities of daily living, such as eating, toileting, transferring, bathing, dressing, or continence;
  - b. Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or

- c. Having a level of disability similar to that described in subdivision a as determined by the secretary of health and human services.
4. a. "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract, but:
- (1) Whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies; and
  - (2) Who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts.
- b. "Financing entity" does not include a nonaccredited investor or a viatical settlement purchaser.
5. "Fraudulent viatical settlement act" includes:
- a. Acts or omissions committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, or permits its employees or its agents to engage in acts including:
- (1) Presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, financing entity, insurer, insurance producer, or any other person, false material information, or concealing material information, as part of, in support of or concerning a fact material to one or more of the following:
    - (a) An application for the issuance of a viatical settlement contract or insurance policy;
    - (b) The underwriting of a viatical settlement contract or insurance policy;
    - (c) A claim for payment or benefit pursuant to a viatical settlement contract or insurance policy;
    - (d) Premiums paid on an insurance policy;
    - (e) Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or insurance policy;
    - (f) The reinstatement or conversion of an insurance policy;
    - (g) The solicitation, offer, effectuation, or sale of a viatical settlement contract or insurance policy;

- (h) The issuance of written evidence of a viatical settlement contract or insurance; or
      - (i) A financing transaction; and
    - (2) Employing any plan, financial structure, device, scheme, or artifice to defraud related to viaticated policies;
  - b. In the furtherance of a fraud or to prevent the detection of a fraud any person commits or permits its employees or its agents to:
    - (1) Remove, conceal, alter, destroy, or sequester from the commissioner the assets or records of a licensee or other person engaged in the business of viatical settlements;
    - (2) Misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other person;
    - (3) Transact the business of viatical settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of viatical settlements; or
    - (4) File with the commissioner or the equivalent chief insurance regulatory official of another jurisdiction a document containing false information or otherwise conceal information about a material fact from the commissioner;
  - c. Embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a viatical settlement provider, insurer, insured, viator, insurance policyowner, or any other person engaged in the business of viatical settlements or insurance;
  - d. Recklessly entering into, negotiating, brokering, or otherwise dealing in a viatical settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, if the person or the persons intended to defraud the policy's issuer, the viatical settlement provider or the viator. "Recklessly" means engaging in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct; or
  - e. Attempting to commit, assisting, aiding, or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.
- 6. "Person" means a natural person or a legal entity, including an individual, partnership, limited liability company, association, trust, or corporation.

7. "Policy" means an individual or group policy, group certificate, contract, or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state.
8. "Related provider trust" means a titling trust or other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust must have a written agreement with the licensed viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the commissioner as if those records and files were maintained directly by the licensed viatical settlement provider.
9. "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide either directly or indirectly access to institutional capital markets:
  - a. For a financing entity or licensed viatical settlement provider; or
  - b.
    - (1) In connection with a transaction in which the securities in the special purposes entity are acquired by the viator or by "qualified institutional buyers" as defined in rule 144 adopted under the Securities Act of 1933, as amended; or
    - (2) The securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets.
10. "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in twenty-four months or less.
11. "Viatical settlement broker" means a person who working exclusively on behalf of a viator and for a fee, commission, or other valuable consideration, offers or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers or one or more viatical settlement brokers. Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator, and not the insurer or the viatical settlement provider, and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator. The term does not include an attorney, certified public accountant, or a financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser.
12. a. "Viatical settlement contract" means a written agreement between a viator and a viatical settlement provider or any affiliate of the viatical settlement provider establishing the terms under which compensation or anything of value is or will be paid, which compensation or value is less than the expected death benefits of the policy, in return for the viator's present or future assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance.

- b. "Viatical settlement contract" includes a premium finance loan made for a life insurance policy by a lender to a viator on, before, or after the date of issuance of the policy if:
- (1) The loan proceeds are not used solely to pay:
    - (a) Premiums for the policy; or
    - (b) The costs of the loan, including interest, arrangement fees, utilization fees and similar fees closing costs, legal fees and expenses, trustee fees and expenses, and third-party collateral provider fees and expenses, including fees payable to letter of credit issuers;
  - (2) The viator or the insured receives on the date of the premium finance loan a guarantee of a future viatical settlement value of the policy; or
  - (3) The viator or the insured agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy.
- c. "Viatical settlement contract" does not include:
- (1) A policy loan or accelerated death benefit made by the insurer pursuant to the policy's terms;
  - (2) A loan made by a bank or other licensed financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of the loan or, if there is a default on the loan and the policy is transferred, the further assignment of the policy by the lender, provided that the default itself is not pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this chapter;
  - (3) A loan made by a lender that does not violate chapter 26.1-20.1, provided that the premium finance loan is not described in subdivision b;
  - (4) An agreement in which all the parties are closely related to the insured by blood or law or have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured, or are trusts established primarily for the benefit of such parties;
  - (5) Any designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee;
  - (6) A bona fide business succession planning arrangement:
    - (a) Between one or more shareholders in a corporation or between a corporation and one or more of its

- shareholders or one or more trusts established by its shareholders;
- (b) Between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partners; or
  - (c) Between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members;
- (7) An agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or
- (8) Any other contract, transaction, or arrangement exempted from the definition of viatical settlement contract by the commissioner based on a determination that the contract, transaction, or arrangement is not of the type intended to be regulated by this chapter.
13. "Viatical settlement investment agent" means a person who is an appointed or contracted agent of a licensed viatical settlement provider who solicits or arranges the funding for the purchase of a viatical settlement by a viatical settlement purchaser and who is acting on behalf of a viatical settlement provider. A viatical settlement investment agent is an agent as defined in section 10-04-02.
- a. A viatical settlement investment agent shall not have any contact directly or indirectly with the viator or insured or have knowledge of the identity of the viator or insured.
  - b. A viatical settlement investment agent is deemed to represent the viatical settlement provider of whom the viatical settlement investment agent is an appointed or contracted agent.
14. a. "Viatical settlement provider" means a person, other than a viator, that enters into or effectuates a viatical settlement contract with a viator resident in this state.
- b. "Viatical settlement provider" does not include:
- (1) A bank, savings bank, savings and loan association, or credit union;
  - (2) A licensed lending institution or premium finance company making premium finance loans and exempted by the commissioner from the licensing requirement under the premium finance laws, that takes an assignment of a life insurance policy solely as collateral for a loan;
  - (3) The issuer of the life insurance policy;



- (4) An authorized or eligible insurer that provides stop-loss coverage or financial guaranty insurance to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust;
  - (5) A natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;
  - (6) A financing entity;
  - (7) A special purpose entity;
  - (8) A related provider trust;
  - (9) A viatical settlement purchaser; or
  - (10) Any other person that the commissioner determines is not the type of person intended to be covered by the definition of viatical settlement provider.
15. "Viatical settlement purchase agreement" means a contract or agreement, entered into by a viatical settlement purchaser, to which the viator is not a party, to purchase a life insurance policy or an interest in a life insurance policy, that is entered into for the purpose of deriving an economic benefit. A viatical settlement purchase agreement is a viatical settlement contract as defined in section 10-04-02.
16.
  - a. "Viatical settlement purchaser" means a person who provides a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy that has been or will be the subject of a viatical settlement contract, or a person who owns or acquires or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract, for the purpose of deriving an economic benefit.
  - b. "Viatical settlement purchaser" does not include:
    - (1) A licensee under this chapter;
    - (2) An accredited investor or qualified institutional buyer as defined, respectively, in rule 501(a) or rule 144A adopted under the Federal Securities Act of 1933, as amended;
    - (3) A financing entity;
    - (4) A special purpose entity; or
    - (5) A related provider trust.
17. "Viaticated policy" means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.

18. a. "Viator" means the owner of a life insurance policy or a certificate holder under a group policy who resides in this state and enters or seeks to enter into a viatical settlement contract. For the purposes of this chapter, a viator shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. If there is more than one viator on a single policy and the viators are residents of different states, the transactions shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all the viators.
- b. "Viator" does not include:
- (1) A licensee under this chapter;
  - (2) Qualified institutional buyer as defined, respectively, in rule 144A adopted under the Federal Securities Act of 1933, as amended;
  - (3) A financing entity;
  - (4) A special purpose entity; or
  - (5) A related provider trust.

**26.1-33.3-02. License and bond requirements.**

1. a. A person shall not operate as a viatical settlement provider or viatical settlement broker without first obtaining a license from the commissioner of the state of residence of the viator. A person may not operate as a viatical settlement broker without first obtaining an insurance producer license from the commissioner.
  - b. The insurer that issued the policy being viaticated shall not be responsible for any act or omission of a viatical settlement broker or viatical settlement provider arising out of or in connection with the viatical settlement transaction, unless the insurer receives compensation for the placement of a viatical settlement contract from the viatical settlement provider or viatical settlement broker in connection with the viatical settlement contract.
  - c. A person licensed as an attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator, whose compensation is not paid directly or indirectly by the viatical settlement provider, may negotiate viatical settlement contracts on behalf of the viator without having to obtain a license as a viatical settlement broker.
2. Application for a viatical settlement provider or viatical settlement broker license shall be made to the commissioner by the applicant on a form prescribed by the commissioner, and these applications shall be accompanied by a two hundred fifty dollar fee for a provider license and a two hundred dollar fee for a broker license.

3. Licenses may be renewed from year to year on the anniversary date upon payment of the annual renewal fee of one hundred dollars. Failure to pay the fees by the renewal date results in expiration of the license.
4. The applicant shall provide information on forms required by the commissioner. The commissioner shall have authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, members, and employees, and the commissioner may refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner or member thereof who may materially influence the applicant's conduct meets the standards of this chapter.
5. A license issued to a legal entity authorizes all partners, officers, members and designated employees to act as viatical settlement providers or viatical settlement brokers, as applicable, under the license, and all those persons shall be named in the application and any supplements to the application.
6. Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:
  - a. If a viatical settlement provider, has provided a detailed plan of operation;
  - b. Is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for;
  - c. Has a good business reputation and has had experience, training or education so as to be qualified in the business for which the license is applied for;
  - d.
    - (1) If a viatical settlement provider, has demonstrated evidence of financial responsibility in a format prescribed by the commissioner through either a surety bond executed and issued by an insurer authorized to issue surety bonds in this state or a deposit of cash, certificates of deposit or securities or any combination thereof in the amount of one hundred fifty thousand dollars.
    - (2) If a viatical settlement broker, has demonstrated evidence of financial responsibility in a format prescribed by the commissioner through either a surety bond executed and issued by an insurer authorized to issue surety bonds in this state or a deposit of cash, certificates of deposit, or securities or any combination thereof in the amount of one hundred fifty thousand dollars.
    - (3) The commissioner shall accept, as evidence of financial responsibility, proof that financial instruments in accordance with the requirements in this section have been filed with one or more states where the applicant is licensed as a viatical settlement provider or viatical settlement broker.

- (4) The commissioner may ask for evidence of financial responsibility at any time the commissioner deems necessary.
  - (5) Any surety bond issued pursuant to this subdivision shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices by the viatical settlement provider or viatical settlement broker.
- e. If a legal entity, provides a certificate of good standing from the state of its domicile; and
- f. If a viatical settlement provider or viatical settlement broker, has provided an antifraud plan that meets the requirements of subsection 7 of section 26.1-33.3-13.
- 7. The commissioner shall not issue a license to a nonresident applicant, unless a written designation of an agent for service of process is filed and maintained with the commissioner or the applicant has filed with the commissioner, the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner.
- 8. A viatical settlement provider or viatical settlement broker shall provide to the commissioner new or revised information about officers, ten percent or more stockholders, partners, directors, members, or designated employees within thirty days of the change.

**26.1-33.3-03. License revocation and denial.**

- 1. The commissioner may refuse to issue, suspend, revoke or refuse to renew the license of a viatical settlement provider or viatical settlement broker if the commissioner finds that:
  - a. There was any material misrepresentation in the application for the license;
  - b. The licensee or any officer, partner, member, or key management personnel has been convicted of fraudulent or dishonest practices, is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent;
  - c. The viatical settlement provider demonstrates a pattern of unreasonable payments to viators;
  - d. The licensee or any officer, partner, member or key management personnel has been found guilty of, or has pleaded guilty or nolo contendere to, any felony, or to misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;
  - e. The viatical settlement provider has entered into any viatical settlement contract that has not been approved pursuant to this chapter;

- f. The viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract;
  - g. The licensee no longer meets the requirements for initial licensure;
  - h. The viatical settlement provider has assigned, transferred, or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state, viatical settlement purchaser, an accredited investor or qualified institutional buyer as defined respectively in rule 501(a) or rule 144A promulgated under the Federal Securities Act of 1933, as amended, financing entity, special purpose entity, or related provider trust; or
  - i. The licensee or any officer, partner, member, or key management personnel has violated any provision of this chapter.
2. The commissioner may suspend, revoke or refuse to renew the license of a viatical settlement broker if the commissioner finds that the viatical settlement broker has violated the provisions of this chapter or has otherwise engaged in bad faith conduct with one or more viators.
3. If the commissioner denies a license application or suspends, revokes or refuses to renew the license of a viatical settlement provider or viatical settlement broker pursuant to this chapter the commissioner shall conduct a hearing in accordance with chapter 28-32.

**26.1-33.3-04. Approval of viatical settlement contracts and disclosure statements.** A person shall not use a viatical settlement contract form or provide to a viator a disclosure statement from in this state unless first filed with and approved by the commissioner. The commissioner shall disapprove a viatical settlement contract form or disclosure statement form if in the commissioner's opinion, the contract or provisions contained therein fail to meet the requirement of sections 26.1-33.3-07, 26.1-33.3-09, and 26.1-33.3-12, and subsection 2 of section 26.1-33.3-13 or are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator.

**26.1-33.3-05. Reporting requirements and privacy.**

1. Each viatical settlement provider shall file with the commissioner on or before March first of each year an annual statement containing such information as the commissioner may prescribed by regulation. Such information shall be limited to only those transactions where the viator is a resident of this state. Individual transaction data regarding the business of viatical settlements or data that could compromise the privacy of personal, financial, and health information of the viator or insured shall be filed with the commissioner on a confidential basis.
2. Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement broker, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity, shall not disclose that identity as an insured, or the insured's financial or medical information to any other person unless the disclosure:

- a. Is necessary to effect a viatical settlement between the viator and a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;
- b. Is provided in response to an investigation or examination by the commissioner or any other governmental officer or agency or pursuant to the requirements of subsection 3 of section 26.1-33.3-13;
- c. Is a term of or condition to the transfer of a policy by one viatical settlement provider to another viatical settlement provider;
- d. Is necessary to permit a financing entity, related provider trust or special purpose entity to finance the purchase of policies by a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;
- e. Is necessary to allow the viatical settlement provider or viatical settlement broker or their authorized representatives to make contacts for the purpose of determining health status; or
- f. Is required to purchase stop-loss coverage or financial guaranty insurance.

#### **26.1-33.3-06. Examination or investigations.**

- 1. Authority, scope and scheduling of examinations.
  - a. (1) The commissioner may conduct an examination under this chapter of a licensee as often as the commissioner deems appropriate after considering the factors set forth in this subdivision.
  - (2) In scheduling and determining the nature, scope, and frequency of the examinations, the commissioner shall consider such matters as the consumer complaints, results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, report of independent certified public accountants, and other relevant criteria as determined by the commissioner.
  - b. For purposes of completing an examination of a licensee under this chapter, the commissioner may examine or investigate any person, or the business of any person, in so far as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the licensee.
  - c. In lieu of an examination under this chapter of any foreign or alien licensee licensed in this state, the commissioner may accept an examination report on the licensee as prepared by the commissioner for the licensee's state of domicile or port-of-entry state.
  - d. As far as practical, the examination of a foreign or alien insurer shall be made in cooperation with the insurance supervisory officials of other states in which the insurer transacts business.

2. Record retention requirement.

- a. A person required to be licensed by this chapter shall for five years retain copies of all:
- (1) Proposed, offered or executed contracts, purchase agreements, underwriting documents, policy forms, and applications from the date of the proposal, offer or execution of the contract or purchase agreement, whichever is later;
  - (2) Checks, drafts or other evidence and documentation related to the payment, transfer, deposit or release of funds from the date the transaction; and
  - (3) Other records and documents related to the requirements of this chapter.
- b. The section does not relieve a person of the obligation to produce these documents to the commissioner after the retention period has expired if the person has retained the documents.
- c. Records required to be retained by this section must be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.

3. Conduct of examinations.

- a. Upon determining that an examination should be conducted, the commissioner shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the examiners handbook adopted by the national association of insurance commissioners. The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate.
- b. Every licensee or person from whom information is sought, its officers, directors and agents shall provide to the examiners timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets, and computer or other recordings relating to the property, assets, business, and affairs of the licensee being examined. The officers, directors, employees, and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of a licensee, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the commissioner shall be grounds for suspension or refusal of, or nonrenewal of any license or authority held by the licensee to engage in the viatical settlement business or other business subject to the commissioner's jurisdiction. Any proceedings for suspension, revocation or refusal of any license or authority shall be conducted pursuant to this title and chapter 28-32.

- c. The commissioner shall have the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court.
  - d. When making an examination under this chapter, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the licensee that is the subject of the examination.
  - e. Nothing contained in this chapter shall be construed to limit the commissioner's authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.
  - f. Nothing contained in this chapter shall be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or licensee workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the commissioner may deem appropriate.
4. Examination reports.
- a. Examination reports shall be comprised of only facts appearing upon the books, records or other documents of the licensee, its agents or other persons examined, or as ascertained from the testimony of its officers or agent or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.
  - b. No later than sixty days following completion of the examination, the examiner in charge shall file with the commissioner a verified written report of examination under oath. Upon receipt of the verified report, the commissioner shall transmit the report to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report.
  - c. If the commissioner determines that regulatory action is appropriate as a result of an examination, the commissioner may initiate any proceedings or actions provided by law.
5. Confidentiality of examination information.



- a. Names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the commissioner, unless required by law.
- b. Except as otherwise provided in this chapter, all examination reports, working papers, recorded information, documents, and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this chapter, or in the course of analysis or investigation by the commissioner of the financial condition or market conduct of a licensee shall be confidential by law and privileged, shall not be subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.
- c. Documents, materials or other information, including all working papers, and copies thereof, in the possession or control of the national association of insurance commissioners and its affiliates and subsidiaries shall be confidential by law and privileged, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action if they are:
  - (1) Created, produced, or obtained by or disclosed to the national association of insurance commissioners and its affiliates and subsidiaries in the course of assisting an examination made under this chapter, or assisting a commissioner in the analysis or investigation of the financial condition or market conduct of a licensee; or
  - (2) Disclosed to the national association of insurance commissioners and its affiliates and subsidiaries under subdivision d by a commissioner.
  - (3) For the purposes of subdivision b, this chapter includes the law of another state or jurisdiction that is substantially similar to this chapter.
- d. Neither the commissioner nor any person that received the documents, material, or other information while acting under the authority of the commissioner, including the national association of insurance commissioners and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials, or information subject to subdivision a.
- e. In order to assist in the performance of the commissioner's duties, the commissioner:
  - (1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subdivision a, with other state, federal and international regulatory agencies, with the

national association of insurance commissioners and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, communication, or other information;

(2) May receive documents, materials, communications, or information, including otherwise confidential and privileged documents, materials or information, from the national association of insurance commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement official of other foreign or domestic jurisdiction, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(3) May enter into agreements governing sharing and use of information consistent with this subsection.

f. No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subdivision d.

g. A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection shall be available and enforced in any proceeding in, and in any court of, this state.

h. Nothing contained in this chapter shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the commissioner of any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time or to the national association of insurance commissioners, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this chapter.

6. Conflict of interest.

a. An examiner may not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this chapter. This section shall not be construed to automatically preclude an examiner from being:

(1) A viator;

(2) An insured in a viaticated insurance policy; or

- (3) A beneficiary in an insurance policy that is proposed to be viaticated.
  - b. Notwithstanding the requirements of this clause, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this chapter.
- 7. Cost of examinations. The expenses incurred in conducting any examination must be paid by the licensee or applicant.
- 8. Immunity from liability.
  - a. No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this chapter.
  - b. No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this chapter, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This subdivision does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in subdivision a.
  - c. A person identified in subdivision a or b shall be entitled to an award of attorney's fees and costs if the person is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this chapter and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.
- 9. Investigative authority of the commissioner. The commissioner may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.

#### **26.1-33.3-07. Disclosure to viator.**

- 1. With each application for a viatical settlement, a viatical settlement provider or viatical settlement broker shall provide the viator with at least the following disclosures no later than the time the application for the viatical settlement contract is signed by all parties. The disclosures shall be provided in a separate document that is signed by the viator and the viatical settlement provider or viatical settlement broker, and shall provide the following information:

- a. There are possible alternatives to viatical settlement contracts including any accelerated death benefits or policy loans offered under the viator's life insurance policy.
- b. That a viatical settlement broker represents exclusively the viator, and not the insurer or the viatical settlement provider, and owes a fiduciary duty to the viator, including a duty to act according to the viator's instructions and in the best interest of the viator.
- c. Some or all of the proceeds of the viatical settlement may be taxable under federal income tax and state franchise and income taxes, and assistance should be sought from a professional tax advisor.
- d. Proceeds of the viatical settlement could be subject to the claims of creditors.
- e. Receipt of the proceeds of a viatical settlement may adversely affect the viator's eligibility for medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.
- f. The viator has the right to rescind a viatical settlement contract before the earlier of sixty calendar days after the date upon which the viatical settlement contract is executed by all parties or thirty calendar days after the viatical settlement proceeds have been delivered to the escrow agent by or on behalf of the settlement provider, as provided in subsection 6 of section 26.1-33.3-09. Rescission, if exercised by the viator, is effective only if both notice of the rescission is given, and the viator repays all proceeds and any premiums, loans, and loan interest paid on account of the viatical settlement provider within the rescission period. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment by the viator or the viator's estate of all viatical settlement proceeds and any premiums, loans, and loan interest the viatical settlement within sixty days of the insured's death.
- g. Funds will be sent to the viator by the later of the expiration of the rescission period or within three business days after the viatical settlement provider has received the insurer or group administrator's written acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.
- h. Entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator. Assistance should be sought from a financial adviser.
- i. Disclosure to a viator shall include distribution of a brochure describing the process of viatical settlements. The national association of insurance commissioner's form for the brochure shall be used unless another form is developed or approved by the commissioner.

- j. The disclosure document shall contain the following language: "All medical, financial or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years."
  - k. Following execution of a viatical contract, the insured may be contacted for the purpose of determining the insured's health status and to confirm the insured's residential or business street address and telephone number, or as otherwise provided in this chapter. This contact shall be limited to once every three months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less. All such contacts shall be made only by a viatical settlement provider licensed in the state in which the viator resided at the time of the viatical settlement, or by the authorized representative of a duly licensed viatical settlement provider.
2. A viatical settlement provider shall provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and provide the following information:
- a. The affiliation, if any, between the viatical settlement provider and the issuer of the insurance policy to be viaticated;
  - b. The document shall include the name, business address, and telephone number of the viatical settlement provider;
  - c. Any affiliations or contractual arrangements between the viatical settlement provider and the viatical settlement purchaser;
  - d. If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, the viator shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with the viator's insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement;
  - e. State the dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate. If known, the viatical settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate, and the extent to which the viator's interest in those benefits will be transferred as a result of the viatical settlement contract; and

- f. Provide the name, business address, and telephone number of the independent third-party escrow agent, and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.
3. A viatical settlement broker shall provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and provide the following information:
- a. The name, business address, and telephone number of the viatical settlement broker;
  - b. A full, complete, and accurate description of all offers, counteroffers, acceptances and rejections relating to the proposed viatical settlement contract;
  - c. A written disclosure of any affiliations or contractual arrangements between the viatical settlement broker and any person making an offer in connection with the proposed viatical settlement contracts;
  - d. The amount and method of calculating the broker's compensation, which term "compensation" includes anything of value paid or given to a viatical settlement broker for the placement of a policy; and
  - e. If any portion of the viatical settlement broker's compensation, as defined in subdivision c, is taken from a proposed viatical settlement offer, the broker shall disclose the total amount of the viatical settlement offer and the percentage of the viatical settlement offer comprised by the viatical settlement broker's compensation.
4. If the viatical settlement provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate in writing the change in ownership or beneficiary to the insured within twenty days after the change.
5. A viatical settlement provider or its viatical settlement investment agent shall provide the viatical settlement purchaser with at least the following disclosures prior to the date the viatical settlement purchase agreement is signed by all parties. The disclosures shall be conspicuously displayed in any viatical purchase contract or in a separate document signed by the viatical settlement purchaser and viatical settlement provider or viatical settlement investment agent, and shall make the following disclosure to the viatical settlement purchaser:
- a. The purchaser will receive no returns, such as dividends and interest, until the insured dies and a death claim payment is made.
  - b. The actual annual rate of return on a viatical settlement contract is dependent upon an accurate projection of the insured's life expectancy, and the actual date of the insured's death. An annual "guaranteed" rate of return is not determinable.

- c. The viaticated life insurance contract should not be considered a liquid purchase since it is impossible to predict the exact timing of its maturity and the funds probably are not available until the death of the insured. There is no established secondary market for resale of these products by the purchaser.
- d. The purchaser may lose all benefits or may receive substantially reduced benefits if the insurer goes out of business during the term of the viatical investment.
- e. The purchaser is responsible for payment of the insurance premium or other costs related to the policy, if required by the terms of the viatical purchase agreement. These payments may reduce the purchaser's return. If a party other than the purchaser is responsible for the payment, the name and address of that party also shall be disclosed.
- f. The purchaser is responsible for payment of the insurance premiums or other costs related to the policy if the insured returns to health. Disclose the amount of such premiums, if applicable.
- g. State the name, business address, and telephone number of the independent third party providing escrow services and the relationship to the broker.
- h. The amount of any trust fees or other expenses to be charged to the viatical settlement purchaser shall be disclosed.
- i. State whether the purchaser is entitled to a refund of all or part of the purchaser's investment under the settlement contract if the policy is later determined to be null and void.
- j. Disclose that group policies may contain limitations or caps in the conversion rights, additional premiums may have to be paid if the policy is converted, name the party responsible for the payment of the additional premiums and, if a group policy is terminated and replaced by another group policy, state that there may be no right to convert the original coverage.
- k. Disclose the risks associated with policy contestability including, but not limited to, the risk that the purchaser will have no claim or only a partial claim to death benefits should the insurer rescind the policy within the contestability period.
- l. Disclose whether the purchaser will be the owner of the policy in addition to being the beneficiary, and if the purchaser is the beneficiary only and not also the owner, the special risks associated with that status, including, but not limited to, the risk that the beneficiary may be changed or the premium may not be paid.
- m. Describe the experience and qualifications of the person who determines the life expectancy of the insured, such as in-house staff, independent physicians, and specialty firms that weigh medical and actuarial data; the information this projection is based on; and the relationship of the projection maker to the viatical settlement provider, if any.

- n. Disclosure to an investor shall include distribution of a brochure describing the process of investment in viatical settlements. The national association of insurance commissioner's form for the brochure shall be used unless one is developed by the commissioner.
6. A viatical settlement provider or its viatical settlement investment agent shall provide the viatical settlement purchaser with at least the following disclosures no later than at the time of the assignment, transfer or sale of all or a portion of an insurance policy. The disclosures shall be contained in a document signed by the viatical settlement purchaser and viatical settlement provider or viatical settlement investment agent, and shall make the following disclosures to the viatical settlement purchaser:
- a. Disclose all the life expectancy certifications obtained by the provider in the process of determining the price paid to the viator.
  - b. State whether premium payments or other costs related to the policy have been escrowed. If escrowed, state the date upon which the escrowed funds will be depleted and whether the purchaser will be responsible for payment of premiums thereafter and, if so, the amount of the premiums.
  - c. State whether premium payments or other costs related to the policy have been waived. If waived, disclose whether the investor will be responsible for payment of the premiums if the insurer that wrote the policy terminates the waiver after purchase and the amount of those premiums.
  - d. Disclose the type of policy offered or sold, such as whole life, term life, universal life or a group policy certificate, any additional benefits contained in the policy, and the current status of the policy.
  - e. If the policy is term insurance, disclose the special risks associated with term insurance including the purchaser's responsibility for additional premiums if the viator continues the term policy at the end of the current term.
  - f. State whether the policy is contestable.
  - g. State whether the insurer that wrote the policy has any additional rights that could negatively affect or extinguish the purchaser's rights under the viatical settlement contract, what these rights are, and under what conditions these rights are activated.
  - h. State the name and address of the person responsible for monitoring the insured's condition. Describe how often the monitoring of the insured's condition is done, how the date of death is determined, and how and when this information will be transmitted to the purchaser.
7. The viatical settlement purchase agreement is voidable by the purchaser at any time within three days after the disclosures mandated by subsections 5 and 6 are received by the purchaser.



**26.1-33.3-08. Disclosure to insurer.** Prior to the initiation of a viatical settlement plan, viatical settlement transaction, or series of viatical settlement transactions, a viatical settlement broker or viatical settlement provider shall fully disclose all nonproprietary information to an insurer the details of the plan, transaction, or series of transactions, to which the viatical settlement broker or viatical settlement provider is a party, to originate, renew, continue, or finance a life insurance policy with the insurer for the purpose of engaging in the business of viatical settlements at any time prior to, or during the first five years after, issuance of the policy. Any disclosure required under this section must be in writing.

**26.1-33.3-09. General rules.**

1. a. A viatical settlement provider entering into a viatical settlement contract shall first obtain:
  - (1) If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract; and
  - (2) A document in which the insured consents to the release of the insured's medical records to a licensed viatical settlement provider, viatical settlement broker and the insurance company that issued the life insurance policy covering the life of the insured.
- b. Within twenty days after a viator executes documents necessary to transfer any rights under an insurance policy or within twenty days of entering any agreement, option, promise or any other form of understanding, expressed or implied, to viaticate the policy, the viatical settlement provider shall give written notice to the insurer that issued that insurance policy that the policy has or will become a viaticated policy. The notice shall be accompanied by the documents required by subdivision c.
- c. The viatical provider shall deliver a copy of the medical release required under paragraph 2 of subdivision a, a copy of the viator's application for the viatical settlement contract, the notice required under subdivision b, and a request for verification of coverage to the insurer that issued the life policy that is the subject of the viatical transaction. The national association of insurance commissioner's form for verification of coverage shall be used unless another form is developed or approved by the commissioner.
- d. The insurer shall respond to a request for verification of coverage submitted on an approved form by a viatical settlement provider or viatical settlement broker within thirty calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract or possible fraud. The insurer shall accept a request for verification of coverage made on a national association of insurance commissioner's form or any other form approved by the commissioner. The insurer shall accept an original or facsimile or electronic copy of such request and any accompanying

authorization signed by the viator. Failure by the insurer to meet its obligations under this subsection shall be a violation of subsection 3 of section 26.1-33.3-10 and section 26.2-33.3-15.

- e. Prior to or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full and complete understanding of the viatical settlement contract, that the viator has a full and complete understanding of the benefits of the life insurance policy, acknowledges that the viator is entering into the viatical settlement contract freely and voluntarily and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued.
        - f. If a viatical settlement broker performs any of these activities required of the viatical settlement provider, the provider is deemed to have fulfilled the requirements of this section.
2. All medical information solicited or obtained by any licensee shall be subject to the applicable provisions of state law relating to confidentiality of medical information.
3. All viatical settlement contracts entered into in this state shall provide the viator with a right to rescind the contract before the earlier of sixty calendar days after the date upon which the viatical settlement contract is executed by all parties or thirty calendar days after the viatical settlement proceeds have been sent to the escrow agent by or on behalf of the viatical settlement provider as provided in subdivision 6 of section 26.1-33.3-09. Rescission by the viator may be conditioned upon the viator both giving notice and repaying to the viatical settlement provider within the rescission period all proceeds of the settlement and any premiums, loans, and loan interest paid by or on behalf of the viatical settlement provider in connection with or as a consequence of the viatical settlement. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the viatical settlement provider or purchaser of all viatical settlement proceeds, and any premiums, loans, and loan interest that have been paid by the viatical settlement provider or purchaser, which shall be paid within sixty calendar days of the death of the insured. In the event of any rescission, if the viatical settlement provider has paid commissions or other compensation to a viatical settlement broker in connection with the rescinded transaction, the viatical settlement broker shall refund all such commissions and compensation to the viatical settlement provider within five business days following receipt of written demand from the viatical settlement provider, which demand shall be accompanied by either the viator's notice of rescission if rescinded at the election of the viator, or notice of the death of the insured if rescinded by reason of the death of the insured within the applicable rescission period.
4. The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment, or change in beneficiary directly to the independent escrow

agent. Within three business days after the date the escrow agent receives the document, or from the date the viatical settlement provider receives the documents, if the viator erroneously provides the documents directly to the provider, the provider shall pay or transfer the proceeds of the viatical settlement into an escrow or trust account maintained in a state or federally chartered financial institution whose deposits are insured by the federal deposit insurance corporation. Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment, or change in beneficiary forms to the viatical settlement provider or related provider trust or other designated representative of the viatical settlement provider. Upon the later to occur of the expiration of any then remaining rescission period or the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment, or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator.

5. Failure to tender consideration to the viator for the viatical settlement contract within the time set forth in the disclosure pursuant to subdivision g of subsection 1 of section 26.1-33.3-07 renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator. Funds shall be deemed sent by a viatical settlement provider to a viator as of the date that the escrow agent either releases funds for wire transfer to the viator or places a check for delivery to the viator via United States postal service or other nationally recognized delivery service.
6. Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker after the viatical settlement has occurred shall only be made by the viatical settlement provider or broker licensed in this state or its authorized representatives and shall be limited to once every three months for insureds with a life expectancy of more than one year, and to no more than once per month for insureds with a life expectancy of one year or less. The provider or broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Viatical settlement providers and viatical settlement brokers shall be responsible for the actions of their authorized representatives.

#### **26.1-33.3-10. Prohibited practices.**

1. It is in violation of this chapter for any person to enter into a viatical settlement contract at any time prior to the application for or issuance of a policy which is the subject of a viatical settlement contract or within a five-year period commencing with the date of issuance of the insurance policy or certificate unless the viator certifies to the viatical settlement provider or it is otherwise conclusively shown by the viatical settlement provider that one or more of the following conditions have been met within the five-year period:
  - a. The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time

covered under the prior policy is at least sixty months. The time covered under a group policy shall be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;

b. The viator submits independent evidence to the viatical settlement provider that one or more of the following conditions have been met within the five-year period:

- (1) The viator or insured is terminally or chronically ill;
- (2) The viator's spouse dies or no remaining beneficiaries are then surviving;
- (3) The viator divorces a spouse;
- (4) The viator retires from full-time employment; or
- (5) The viator becomes physically or mentally disabled and a physician determines that the disability prevents the viator from maintaining full-time employment;

c. A final order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor of the viator, adjudicating the viator in default, bankrupt, or insolvent, or approving a petition seeking reorganization of the viator or appointing a receiver, trustee, or liquidator to all or a substantial part of the viator's assets; or

d. The viator enters into a viatical settlement contract more than two years after the date of issuance of a policy and, with respect to the policy, at all times prior to the date that is two years after policy issuance, the following conditions are met:

- (1) Policy premiums have been funded exclusively with unencumbered assets, including an interest in the life insurance policy being financed only to the extent of its net cash surrender value, provided by, or fully recourse liability incurred by, the insured or a person described in paragraph 4 of subdivision c of subsection 12 of section 26.1-33.3-01;
- (2) There is no agreement or understanding with any other person to guarantee any such liability or to purchase, or stand ready to purchase, the policy, including through an assumption or forgiveness of the loan; and
- (3) Neither the insured nor the policy has been evaluated for settlement in connection with the issuance of the policy.

2. Copies of the independent evidence described in subdivision b of subsection 1 and documents required by subsection 1 of section 26.1-33.3-09 shall be submitted to the insurer when the viatical settlement provider submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation

from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.

3. If the viatical settlement provider submits to the insurer a copy of the owner or insured's certification described in and the independent evidence required by subdivision b of subsection 1 when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, the copy shall be deemed to conclusively establish that the viatical settlement contract satisfies the requirements of this section and the insurer shall timely respond to the request.
4. A insurer may not require, as a condition of responding to a request for verification of coverage or effecting the transfer of a policy pursuant to a viatical settlement contract, that the viator, insured, viatical settlement provider, or viatical settlement broker sign any forms, disclosures, consent, or waiver form that has not been expressly approved by the commissioner for use in connection with viatical settlement contracts in this state.
5. Upon receipt of a properly completed request for change of ownership or beneficiary of a policy, the insurer shall respond in writing within thirty calendar days with written acknowledgement confirming that the change has been effected or specifying the reasons why the requested change cannot be processed. The insurer shall not unreasonably delay effecting change of ownership or beneficiary and shall not otherwise seek to interfere with any viatical settlement contract lawfully entered into in this state.

#### **26.1-33.3-11. Prohibited practices and conflicts of interest.**

1. With respect to any viatical settlement contract or insurance policy, no viatical settlement broker knowingly shall solicit an offer from, effectuate a viatical settlement with, or make a sale to any viatical settlement provider, viatical settlement purchaser, financing entity, or related provider that is controlling, controlled by, or under common control with such viatical settlement broker.
2. With respect to any viatical settlement contract or insurance policy, no viatical settlement provider knowingly may enter into a viatical settlement contract with a viator, if, in connection with such viatical settlement contract, anything of value will be paid to a viatical settlement broker that is controlling, controlled by, or under common control with such viatical settlement provider or the viatical settlement purchaser, financing entity, or related provider trust that is involved in such viatical settlement contract.
3. A violation of subsection 1 or 2 shall be deemed a fraudulent viatical settlement act.
4. It is unlawful for an insurance company to engage in any transaction, act, or practice or course of business or dealing which restricts, limits, or impairs in any way the lawful transfer of ownership, change of beneficiary, or assignment of a policy to effectuate a viatical settlement contract.

**26.1-33.3-12. Advertising for viatical settlements.** Every viatical settlement licensee shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its contracts, products, and services. All advertisements, regardless of by whom written, created, designed, or presented, shall be the responsibility of the viatical settlement licensees, as well as the individual who created or presented the advertisement. A system of control shall include regular routine notification, at least once a year, to agents and others authorized by the viatical settlement licensee who disseminate advertisements of the requirements and procedures for approval prior to the use of any advertisements not furnished by the viatical settlement licensee. The commissioner may adopt rules to implement this section.

**26.1-33.3-13. Fraud prevention and control.**

1. Fraudulent viatical settlement acts, interference and participation of convicted felons prohibited.
  - a. A person shall not commit a fraudulent viatical settlement act.
  - b. A person shall not knowingly or intentionally interfere with the enforcement of the provisions of this chapter or investigations of suspected or actual violations of this chapter.
  - c. A person in the business of viatical settlements shall not knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements.
2. Fraud warning required.
  - a. Viatical settlement contracts and applications for viatical settlements, regardless of the form of transmission, must contain the following statement or a substantially similar statement:

"Any person who knowingly presents false information in an application for insurance or viatical settlement contract is guilty of a crime and may be subject to fines and confinement in prison."
  - b. The lack of a statement as required in subdivision a does not constitute a defense in any prosecution for a fraudulent viatical settlement act.
3. Mandatory reporting of fraudulent viatical settlement acts.
  - a. Any person engaged in the business of viatical settlements having knowledge or a reasonable suspicion that a fraudulent viatical settlement act is being, will be or has been committed shall provide to the commissioner such information as required by, and in a manner prescribed by, the commissioner.
  - b. Any other person having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be or has been committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

4. Immunity from liability.

- a. No civil liability shall be imposed on and no cause of action shall arise from a person's furnishing information concerning suspected, anticipated or completed fraudulent viatical settlement acts or suspected or completed fraudulent insurance acts, if the information is provided to or received from:
- (1) The commissioner or the commissioner's employees, agents or representatives;
  - (2) Federal, state or local law enforcement or regulatory officials or their employees, agents or representatives;
  - (3) A person involved in the prevention and detection of fraudulent viatical settlement acts or that person's agents, employees or representatives;
  - (4) The national association of insurance commissioners, national association of securities dealers, the North American securities administrators association, or their employees, agents or representatives, or other regulatory body overseeing life insurance, viatical settlements, securities or investment fraud; or
  - (5) The life insurer that issued the life insurance policy covering the life of the insured.
- b. Subdivision a shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent viatical settlement act, the party bringing the action shall plead specifically any allegation that subdivision a does not apply because the person filing the report or furnishing the information did so with actual malice.
- c. A person furnishing information as identified in subdivision a shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this chapter and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated. However, such an award does not apply to any person furnishing information concerning that person's own fraudulent viatical settlement acts.
- d. This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in subdivision a.

5. Confidentiality.

- a. The documents and evidence provided pursuant to subsection 4 or obtained by the commissioner in an investigation of suspected or actual fraudulent viatical settlement acts shall be privileged and

confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

- b. Subdivision a does not prohibit release by the commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent viatical settlement acts:
  - (1) In administrative or judicial proceedings to enforce laws administered by the commissioner;
  - (2) To federal, state or local law enforcement or regulator agencies, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts or to the national association of insurance commissioners; or
  - (3) At the discretion of the commissioner, to a person in the business of viatical settlements that is aggrieved by a fraudulent viatical settlement act.
- c. Release of documents and evidence under subdivision b does not abrogate or modify the privilege granted in subdivision a.

6. Other law enforcement or regulatory authority. This chapter shall not:

- a. Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine and prosecute suspected violations of law;
- b. Prevent or prohibit a person from disclosing voluntarily information concerning viatical settlement fraud to a law enforcement or regulatory agency other than the insurance department; or
- c. Limit the powers granted elsewhere by the laws of this state to the commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

7. Viatical settlement antifraud initiatives.

- a. Viatical settlement providers and viatical settlement brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute and prevent fraudulent viatical settlement acts. At the discretion of the commissioner, the commissioner may order, or a licensee may request and the commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section.
- b. Antifraud initiatives shall include:
  - (1) Fraud investigators, who may be viatical settlement provider or viatical settlement broker employees or independent contractors; and



- (2) An antifraud plan, which shall be submitted to the commissioner. The antifraud plan shall include, but not be limited to:
- (a) A description of the procedures for detecting and investigating possible fraudulent viatical settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;
  - (b) A description of the procedures for reporting possible fraudulent viatical settlement acts to the commissioner;
  - (c) A description of the plan for antifraud education and training of underwriters and other personnel; and
  - (d) A description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.
- c. Antifraud plans submitted to the commissioner shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

**26.1-33.3-14. Injunctions - Civil remedies - Cease and desist - Penalty.**

1. In addition to the penalties and other enforcement provisions of this chapter, if any person violates this chapter or any regulation implementing this chapter, the commissioner may seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders that the commissioner determines are necessary to restrain the person from committing the violation.
2. Any person damaged by the acts of a person in violation of this chapter may bring a civil action against the person committing the violation in a court of competent jurisdiction.
3. The commissioner may issue, in accordance with this title and chapter 28-32, a cease and desist order upon a person that violates any provision of this chapter, any regulation or order adopted by the commissioner, or any written agreement entered into with the commissioner.
4. When the commissioner finds that an activity in violation of this chapter presents an immediate danger to the public that requires an immediate final order, the commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for ninety days. If the commissioner begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective,

absent an order by a court of competent jurisdiction pursuant to this title and chapter 28-32.

5. In addition to the penalties and other enforcement provisions of this chapter, any person who violates this chapter is subject to civil penalties of up to fifty thousand dollars per violation. Imposition of civil penalties shall be pursuant to an order of the commissioner issued under this title and chapter 28-32. The commissioner's order may require a person found to be in violation of this chapter to make restitution to persons aggrieved by violations of this chapter.
6. A person convicted of a violation of this chapter by a court of competent jurisdiction is governed by chapter 12.1-32. A person convicted of a violation of this chapter shall be ordered to pay restitution to persons aggrieved by the violation of this chapter. Restitution shall be ordered in addition to a fine or imprisonment, but not in lieu of a fine or imprisonment.
7. Except for a fraudulent viatical settlement act committed by a viator, the enforcement provisions and penalties of this section shall not apply to a viator.
8. A person convicted of a violation of this chapter by a court of competent jurisdiction may be sentenced in accordance with subdivision a, b, c, or d based on the greater of the value of property, services, or other benefit wrongfully obtained or attempted to obtain; or the aggregate economic loss suffered by any person as a result of the violation. A person convicted of a fraudulent viatical settlement act must be ordered to pay restitution to persons aggrieved by the fraudulent viatical settlement act. Restitution must be ordered in addition to a fine or imprisonment but not in lieu of a fine or imprisonment. A fraudulent viatical settlement act is:
  - a. A class A felony if the value of a viatical settlement contract is more than thirty-five thousand dollars;
  - b. A class B felony if the value of a viatical settlement contract is more than two thousand five hundred dollars but not more than thirty-five thousand dollars;
  - c. A class C felony if the value of a viatical settlement contract is more than five hundred dollars but not more than two thousand five hundred dollars; or
  - d. A class A misdemeanor if the value of a viatical settlement contract is five hundred dollars or less.

In any prosecution under this section under subdivisions a, b, c, and d, the value of the viatical settlement contracts within any six-month period may be aggregated and the defendant charged accordingly in applying in the provisions of this section; provided that when two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in any county in which one of the offenses was committed for all of the offenses aggregated under this section. The applicable statute of limitations provision shall not begin to run until the insurance company or law enforcement agency is aware of the

fraud, but in no event may the prosecution be commenced later than seven years after the act has occurred.

**26.1-33.3-15. Unfair trade practices.** A violation of this chapter, including the commission of a fraudulent viatical settlement act, shall be considered an unfair trade practice under section 26.1-04-03 subject to the penalties contained in that section.

**26.1-33.3-16. Authority to promulgate regulations.** The commissioner shall have the authority to:

1. Promulgate regulations implementing this chapter;
2. Establish standards for evaluating reasonableness of payments under viatical settlement contracts for persons who are terminally or chronically ill. This authority includes, but is not limited to, regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise or bequest of a benefit under a life insurance policy insuring the life of a person that is chronically or terminally ill;
3. Establish appropriate licensing requirements, fees, and standards for continued licensure for viatical settlement providers and brokers;
4. Require a bond or other mechanism for financial accountability for viatical settlement providers and brokers; and
5. Adopt rules governing the relationship and responsibilities of both insurers and viatical settlement providers and viatical settlement brokers during the viatication of a life insurance policy or certificate.

**26.1-33.3-17. Effective date.** This chapter takes effect on August 1, 2007. A viatical settlement provider or viatical settlement broker transacting business in this state may continue to do so pending approval or disapproval of the provider or broker application for a license as long as the application is filed with the commissioner by August 1, 2007.

**SECTION 3. REPEAL.** Chapter 26.1-33.2 of the North Dakota Century Code is repealed.

Approved April 9, 2007  
Filed April 10, 2007

**CHAPTER 267****SENATE BILL NO. 2155**

(Senators Hacker, Andrist, Heitkamp)  
(Representatives Gruchalla, N. Johnson, Vigesaa)

**ANNUITY TRANSACTION SUITABILITY**

AN ACT to create and enact chapter 26.1-34.2 of the North Dakota Century Code, relating to suitability in annuity transactions; and to provide a penalty.

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

**SECTION 1.** Chapter 26.1-34.2 of the North Dakota Century Code is created and enacted as follows:

**26.1-34.2-01. Exemptions.** Unless otherwise specifically included, this chapter does not apply to recommendations involving:

1. Direct response solicitations if there is no recommendation based on information collected from the consumer pursuant to this chapter; and
2. Contracts used to fund:
  - a. An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act;
  - b. A plan described by section 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code, as amended, if established or maintained by an employer;
  - c. A government or church plan defined in section 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the Internal Revenue Code;
  - d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
  - e. Settlements of or assumptions of liabilities associated with personal injury litigation or a dispute or claim resolution process; or
  - f. Formal prepaid funeral contracts.

**26.1-34.2-02. Definitions.**

1. "Annuity" means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.
2. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, including annuities.

3. "Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.
4. "Recommendation" means advice provided by an insurance producer, or an insurer when no producer is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

**26.1-34.2-03. Duties of insurers and insurance producers.**

1. In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer when no producer is involved, must have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments and other insurance products and as to the consumer's financial situation and needs.
2. Before the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer when no producer is involved, shall make reasonable efforts to obtain information concerning:
  - a. The consumer's financial status;
  - b. The consumer's tax status;
  - c. The consumer's investment objectives; and
  - d. Other information used or considered to be reasonable by the insurance producer, or the insurer when no producer is involved, in making recommendations to the consumer.
3. a. Except as provided under subdivision b, neither an insurance producer nor an insurer when no producer is involved has an obligation to a consumer under subsection 1 related to a recommendation if a consumer:
  - (1) Refuses to provide relevant information requested by the insurer or insurance producer;
  - (2) Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or
  - (3) Fails to provide complete or accurate information.
- b. An insurer or insurance producer's recommendation subject to subdivision a must be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.
4. a. An insurer shall ensure that a system to supervise recommendations that is reasonably designed to achieve compliance with this chapter is established and maintained by

complying with subdivisions c through e, or shall establish and maintain such a system, including:

- (1) Maintaining written procedures; and
  - (2) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this chapter.
- b. A general agent and independent agency shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this chapter, or shall establish and maintain such a system, including:
  - (1) Maintaining written procedures; and
  - (2) Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this chapter.
- c. An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by subdivision a with respect to insurance producers under contract with or employed by the third party.
- d. An insurer shall make reasonable inquiry to ensure that the third party contracting under subdivision c is performing the functions required under subdivision a and shall take action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:
  - (1) The insurer annually obtains a certification from a third-party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and
  - (2) The insurer, based on reasonable selection criteria, periodically selects third parties contracting under subdivision c for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.
- e. An insurer that contracts with a third party pursuant to subdivision c and that complies with the requirements to supervise in subdivision d has fulfilled its responsibilities under subdivision a.
- f. An insurer, general agent, or independent agency is not required by subdivision a or b to:
  - (1) Review, or provide for review of, all insurance producer solicited transactions; or

- (2) Include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent, or independent agency.
- g. A general agent or independent agency contracting with an insurer pursuant to subdivision c shall promptly, when requested by the insurer pursuant to subdivision d, give a certification as described in subdivision d or give a clear statement that it is unable to meet the certification criteria.
- h. A person may not provide a certification under paragraph 1 of subdivision d unless:
  - (1) The person is a senior manager with responsibility for the delegated functions; and
  - (2) The person has a reasonable basis for making the certification.
- 5. Compliance with the national association of securities dealers conduct rules pertaining to suitability satisfies the requirements under this section for the recommendation of variable annuities. However, nothing in this subsection limits the insurance commissioner's ability to enforce the provisions of this chapter.

#### **26.1-34.2-04. Mitigation of responsibility - Penalty.**

- 1. The commissioner may order:
  - a. An insurer to take reasonably appropriate corrective action for a consumer harmed by the insurer's, or by its insurance producer's, violation of this chapter;
  - b. An insurance producer to take reasonably appropriate corrective action for a consumer harmed by the insurance producer's violation of this chapter; and
  - c. A general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale of, annuities to consumers, to take reasonably appropriate corrective action for a consumer harmed by the insurance producer's violation of this chapter.
- 2. Any applicable penalty under section 26.1-01-03.3 for a violation of subsection 1 or 2 or subdivision b of subsection 3 of section 26.1-34.2-03 may be reduced or eliminated, according to a schedule adopted by the commissioner, if corrective action for the consumer was taken promptly after a violation was discovered.

#### **26.1-34.2-05. Recordkeeping.**

- 1. Insurers, general agents, independent agencies, and insurance producers shall maintain or be able to make available to the commissioner a record of the information collected from the consumer and other information used in making the recommendations that were

the basis for insurance transactions for ten years after the insurance transaction is completed by the insurer. An insurer is permitted, but is not required, to maintain documentation on behalf of an insurance producer.

2. Records required to be maintained by this chapter may be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces the actual document.

Approved April 12, 2007  
Filed April 13, 2007



**CHAPTER 268****SENATE BILL NO. 2318**

(Senator Nething)

**INSURANCE POLICY PROVISIONS**

AN ACT to amend and reenact subsection 2 of section 26.1-36-04 of the North Dakota Century Code, relating to accident and health policy provisions.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 26.1-36-04 of the North Dakota Century Code is amended and reenacted as follows:

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. Subject to chapter 26.1-36.4, 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 shall 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, workforce safety and 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 percentage of the insured's earned income as provided 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 percentage 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 percentage 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 when 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 workforce safety and insurance 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.

Approved May 2, 2007  
Filed May 3, 2007

**CHAPTER 269****SENATE BILL NO. 2252**

(Senators Mathern, Seymour)  
(Representatives Price, Kerzman)

**SUICIDE-RELATED HEALTH INSURANCE**

AN ACT to create and enact section 26.1-36-09.12 of the North Dakota Century Code, relating to health insurance coverage for suicide-related medical services.

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

**SECTION 1.** Section 26.1-36-09.12 of the North Dakota Century Code is created and enacted as follows:

**26.1-36-09.12. Medical services related to suicide.** An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any hospital, surgical, medical, or major medical benefit policy on an individual, group, blanket franchise, or association basis unless the policy, contract, or evidence of coverage provides benefits, of the same type offered under the policy or contract for illnesses, for health services to any individual covered under the policy or contract for injury or illness resulting from suicide, attempted suicide, or self-inflicted injury. The medical benefits provided for in this section are exempt from section 54-03-28.

Approved May 4, 2007

Filed May 4, 2007

**CHAPTER 270****SENATE BILL NO. 2154**

(Senators Klein, Andrist, Heitkamp)  
(Representatives Ekstrom, Kasper, Ruby)

**HEALTH INSURANCE LOSS RATIOS**

AN ACT to amend and reenact section 26.1-36-37.2 of the North Dakota Century Code, relating to loss ratios.

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

**SECTION 1. AMENDMENT.** Section 26.1-36-37.2 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-36-37.2. Loss ratios - Rules.** For all policies providing hospital, surgical, medical, or major medical benefit, an insurance company, a nonprofit health service corporation, a fraternal benefit society, and any other entity providing a plan of health insurance or health benefit subject to state insurance regulation shall return benefits to group policyholders in the aggregate of not less than ~~seventy-five~~ seventy percent of premium received and to individual policyholders in the aggregate of not less than ~~sixty-five~~ fifty-five percent of premium received. The commissioner shall adopt rules to establish these minimum standards on the basis of incurred claims experienced and earned premiums for the entire period for which rates are computed to provide coverage in accordance with accepted actuarial principles and practices. This section does not apply to any contract or plan of insurance that provides exclusively for accident, disability income insurance, specified disease, hospital confinement indemnity, or other limited benefit health insurance.

Approved April 13, 2007  
Filed April 16, 2007

**CHAPTER 271****HOUSE BILL NO. 1037**

(Legislative Council)  
(Transportation Committee)

**PROOF OF INSURANCE**

AN ACT to create and enact a new section to chapter 26.1-40 of the North Dakota Century Code, relating to proof of insurance; to amend and reenact section 39-08-20 of the North Dakota Century Code, relating to the criminal procedure for driving without liability insurance; and to provide a penalty.

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

**SECTION 1.** A new section to chapter 26.1-40 of the North Dakota Century Code is created and enacted as follows:

**Proof of insurance.** An insurer who issues a policy shall provide proof of insurance to the insured in the form of written evidence of the policy's terms as to type, duration, and the vehicle covered by the policy.

<sup>147</sup> **SECTION 2. AMENDMENT.** Section 39-08-20 of the North Dakota Century Code is amended and reenacted as follows:

**39-08-20. Driving without liability insurance prohibited - Penalty.**

1. A person may not drive, or the owner may not cause or knowingly permit to be driven, a motor vehicle in this state without a valid policy of liability insurance in effect in order to respond in damages for liability arising out of the ownership, maintenance, or use of that motor vehicle in the amount required by chapter 39-16.1.
2. Upon being stopped by a law enforcement officer for the purpose of enforcing or investigating the possible violation of an ordinance or state law or during the investigation of an accident, the person driving the motor vehicle shall provide to the officer upon request satisfactory evidence of the policy required under this section. If unable to comply with the request, that person may be charged with a violation of this section if that person fails to submit satisfactory evidence of the policy to the officer or the officer's agency within twenty days of the date of the request. If that person produces satisfactory evidence of a valid policy of liability insurance in effect at the time of the alleged violation of this section to the officer, the officer's agency, or a court, that person may not be convicted or assessed any administration fee for violation of ~~this section~~ subsection 1.

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<sup>147</sup> Section 39-08-20 was also amended by section 1 of Senate Bill No. 2146, chapter 328.



3. Notwithstanding section 26.1-30-18, a person may be convicted for failure to have a valid policy of liability insurance in effect under this section if the time of acquisition of the policy was after the time of the alleged incidence of driving without liability insurance. If the time of acquisition of the policy comes into question, the driver or owner has the burden of establishing the time of acquisition. If the driver is not an owner of the motor vehicle, the driver does not violate this section if the driver provides the court with evidence identifying the owner of the motor vehicle and describing circumstances under which the owner caused or permitted the driver to drive the motor vehicle.
4. Violation of ~~this section~~ subsection 1 is a class B misdemeanor and the sentence imposed must include a fine of at least one hundred fifty dollars which may not be suspended. A person convicted for a second or subsequent violation of driving without liability insurance within ~~an eighteen-month~~ a three-year period must be fined at least three hundred dollars which may not be suspended. For a second or subsequent conviction for a violation of subsection 1 or equivalent ordinance, the court shall impound the motor vehicle number plates of the motor vehicle owned and operated by the person at the time of the violation until that person provides proof of insurance and a twenty dollar fee to the department. The person shall deliver the number plates to the court without delay at a time certain as ordered by the court following the conviction. The court shall deliver the number plates to the department. A person who does not provide the number plates to the court at the appropriate time is guilty of a class B misdemeanor.
- 2- 5. Upon conviction for a violation of ~~this section~~ subsection 1 or equivalent ordinance, the person who has been convicted shall provide proof of motor vehicle liability insurance to the department in the form of a written or electronically transmitted certificate from an insurance carrier authorized to do business in this state. This proof must be provided for a period of three years and kept on file with the department. If the person fails to provide this information, the department shall suspend that person's driving privileges and may not issue or renew that person's operator's license unless that person provides proof of insurance.
- 3- 6. A person who has been convicted for violation of ~~this section~~ subsection 1 or equivalent ordinance shall surrender that person's operator's license and purchase a duplicate operator's license with a notation requiring that person to keep proof of liability insurance on file with the department. The fee for this license is fifty dollars and the fee to remove this notation is fifty dollars.
- 4- 7. When an insurance carrier has certified a motor vehicle liability policy, the insurance carrier shall notify the director no later than ten days after cancellation or termination of the certified insurance policy by filing a notice of cancellation or termination of the certified insurance policy; except that a policy subsequently procured and certified shall, on the effective date of its certification, terminate the insurance previously certified with respect to any motor vehicle designated in both certificates.

Approved March 5, 2007

Filed March 6, 2007

# JUDICIAL BRANCH OF GOVERNMENT

## CHAPTER 272

### HOUSE BILL NO. 1097

(Judiciary Committee)  
(At the request of the Supreme Court)

### TEMPORARY COURT OF APPEALS EXTENSION

AN ACT to amend and reenact sections 27-02.1-01, 27-02.1-02, 27-02.1-03, 27-02.1-04, 27-02.1-05, 27-02.1-06, 27-02.1-07, 27-02.1-08, and 27-02.1-09 of the North Dakota Century Code, relating to the temporary court of appeals; to provide an effective date; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 27-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-01. (Effective through January 1, ~~2008~~ 2012) Temporary court of appeals established - Jurisdiction - Writ authority - Administration.** A temporary court of appeals is established to exercise appellate and original jurisdiction as delegated by the supreme court. Panels of the temporary court of appeals may issue original and remedial writs necessary to properly exercise jurisdiction in cases assigned to them. The panels of the temporary court of appeals are subject to administration by the supreme court pursuant to sections 3 and 8 of article VI of the Constitution of North Dakota.

**SECTION 2. AMENDMENT.** Section 27-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-02. (Effective through January 1, ~~2008~~ 2012) Number, assignment, and compensation of judges.**

1. The supreme court may provide for the assignment of active or retired district court judges, retired justices of the supreme court, and lawyers, to serve on three-judge panels of the temporary court of appeals if the chief justice certifies to the governor that the supreme court has disposed of two hundred fifty cases in the twelve months preceding September first of any year. Assignments may be made for a time certain, not to exceed one year from the date of assignment, or specifically for one or more cases on the docket of the supreme court.
2. An active or retired district court judge serving on the temporary court of appeals may not be assigned to hear cases in which the judge participated while serving on the district court. An active district court judge may not be assigned to hear cases that originated in the judicial district of the judge.

3. An active district court judge serving on the temporary court of appeals is not entitled to additional compensation, but is entitled to reimbursement for expenses as provided by sections 44-08-04 and 54-06-09.
4. Retired justices of the supreme court, retired district court judges, and lawyers serving as judges on panels of the temporary court of appeals are entitled to receive as compensation for each day of service in the performance of duties pursuant to the assignment an amount equal to five percent of the gross monthly salary as provided for a regularly elected or appointed justice of the supreme court, or one-half of the daily compensation for services of one-half day or less. The compensation must be paid upon certification by the judge that the services were performed for the number of days shown on the certificate and must be paid in the same manner as the salaries of the regularly elected or appointed judges are paid.

**SECTION 3. AMENDMENT.** Section 27-02.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-03. (Effective through January 1, ~~2008~~ 2012) Assignment and reassignment of cases - Quorum for decision of cases - Authority in furtherance of jurisdiction.**

1. Panels of the temporary court of appeals have jurisdiction to hear and to decide all cases assigned by the supreme court.
2. The supreme court may order reassignment of any case from a panel of the temporary court of appeals to the supreme court.
3. A majority of the three judges of a panel of the temporary court of appeals hearing a case is necessary to pronounce a decision.
4. When a judgment or order is reversed, modified, or confirmed by a panel of the temporary court of appeals, the reasons must be concisely stated in writing, signed by the judges concurring, filed in the office of the clerk of the supreme court, and preserved with the record of the case. Any judge concurring or dissenting may give the reasons for the judge's concurrence or dissent in writing over the judge's signature.

**SECTION 4. AMENDMENT.** Section 27-02.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-04. (Effective through January 1, ~~2008~~ 2012) Administration - Employees and clerical assistance - Court of record - Place of sessions.**

1. The clerk of the supreme court shall provide clerk services to panels of the temporary court of appeals.
2. Panels of the temporary court of appeals may hold court in any place the panel considers convenient and efficient for conducting its business.
3. All proceedings of the panels of the temporary court of appeals must be pursuant to the rules adopted by the supreme court.

**SECTION 5. AMENDMENT.** Section 27-02.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-05. (Effective through January 1, ~~2008~~ 2012) Chief judge.** The chief justice of the supreme court shall designate a chief judge of each panel of the temporary court of appeals who shall preside pursuant to rules of the supreme court.

**SECTION 6. AMENDMENT.** Section 27-02.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-06. (Effective through January 1, ~~2008~~ 2012) Review of decisions of panels.** Any party in interest who is aggrieved by a judgment or order of a panel of the temporary court of appeals may petition the supreme court for review of the judgment or order pursuant to rules of the supreme court. Upon the filing of a petition for review by the supreme court, the order or judgment and mandate of the panel of the temporary court of appeals is stayed pending action of the supreme court. The supreme court has discretion to grant or deny the petition.

**SECTION 7. AMENDMENT.** Section 27-02.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-07. (Effective through January 1, ~~2008~~ 2012) Right to appeal not created.** This chapter does not provide or create a right of appeal if that right is not otherwise provided by law. An appeal assigned to a panel of the temporary court of appeals fulfills the right of appeal provided by section 28-27-02.

**SECTION 8. AMENDMENT.** Section 27-02.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-08. (Effective through January 1, ~~2008~~ 2012) Unitary appeal - Filing of appeal - Filing fee.** All appeals must be treated as one appeal process under the jurisdiction of the supreme court. In any appeal there may be only one filing and one filing fee required. The filing fee is as prescribed by section 27-03-05.

**SECTION 9. AMENDMENT.** Section 27-02.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-09. (Effective through January 1, ~~2008~~ 2012) Publication of opinions.** Opinions of the panels of the temporary court of appeals may be published pursuant to rules of the supreme court.

Approved March 7, 2007  
Filed March 8, 2007

**CHAPTER 273****HOUSE BILL NO. 1083**

(Appropriations Committee)  
(At the request of the Supreme Court)

**SUPREME COURT CLERK FEES**

AN ACT to amend and reenact section 27-03-05 of the North Dakota Century Code, relating to fees charged and collected by the clerk of the supreme court.

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

**SECTION 1. AMENDMENT.** Section 27-03-05 of the North Dakota Century Code is amended and reenacted as follows:

**27-03-05. Fees to be charged and collected by clerk of supreme court - Electronic filing administration fund - Continuing appropriation.** The clerk of the supreme court shall charge and collect in advance a fee of one hundred twenty-five dollars upon the filing in the supreme court of the record in any cause upon appeal or upon the filing in the court of a petition in any cause seeking the exercise of the original court's jurisdiction. In addition to the fee required by this section, the clerk of the supreme court shall charge and collect any electronic filing processing fee established by court rule for any matter filed in an electronic format. ~~The electronic filing administration fund is established in the state treasury. The clerk of the supreme court shall remit electronic filing processing fee revenue to the state treasurer for deposit in the electronic filing administration fund. All moneys in the fund are appropriated on a continuing basis to the judicial branch to be used to cover the actual costs of maintaining an electronic filing system and managing documents filed in an electronic format.~~

Approved March 6, 2007

Filed March 7, 2007

**CHAPTER 274****HOUSE BILL NO. 1092**

(Judiciary Committee)  
(At the request of the Supreme Court)

**JUVENILE COURT PROCEEDINGS**

AN ACT to create and enact sections 27-20-32.3, 27-20-48.2, 27-20-48.3, and 27-20-48.4 of the North Dakota Century Code, relating to active efforts in juvenile proceedings regarding Indian children and legal guardianships for children; to amend and reenact section 12-46-14, subsection 1 of section 15.1-29-14, sections 27-20-02 and 27-20-06, subsection 1 of section 27-20-10, sections 27-20-12, 27-20-13, 27-20-14, 27-20-15, 27-20-17, 27-20-19, 27-20-20, 27-20-24, 27-20-26, 27-20-28, 27-20-30, 27-20-31, 27-20-32.1, subsection 4 of section 27-20-34, subsections 2 and 3 of section 27-20-36, subsection 3 of section 27-20-37, subsection 1 of section 27-20-40, subsection 1 of section 27-20-42, section 27-20-44, subsection 2 of section 27-20-45, and sections 27-20-48, 27-20-48.1, 27-20-50, 27-20-54, 27-20-59, and 54-12-01.3 of the North Dakota Century Code, relating to proceedings under the Uniform Juvenile Court Act and references to juvenile supervisor; to repeal sections 27-05-29, 27-20-01, and 27-20-35 of the North Dakota Century Code, relating to assigned duties of juvenile supervisors and Uniform Juvenile Court Act proceedings; and to provide for a legislative council study.

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

**SECTION 1. AMENDMENT.** Section 12-46-14 of the North Dakota Century Code is amended and reenacted as follows:

**12-46-14. Transportation of persons committed to North Dakota youth correctional center.** The director of juvenile supervisor court, or other officer or person designated by the court at the time commitment is ordered, shall conduct to the North Dakota youth correctional center all persons committed to it. Such person shall receive the amount of mileage allowed in section 11-15-25.

<sup>148</sup> **SECTION 2. AMENDMENT.** Subsection 1 of section 15.1-29-14 of the North Dakota Century Code is amended and reenacted as follows:

1. a. Except as provided in subdivision b, for purposes of applying this chapter, a student's school district of residence is the district in which the student's custodial parent or legal guardian resides:
  - (1) At the time that a state court, tribal court, director of juvenile supervisor court, or the division of juvenile services issues an order requiring the student to stay for a prescribed period

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<sup>148</sup> Section 15.1-29-14 was also amended by section 2 of House Bill No. 1046, chapter 179, and section 32 of Senate Bill No. 2200, chapter 163.

- at a state-licensed foster home or at a state-licensed child care home or facility;
- (2) At the time a county or state social service agency places the student, with the consent of the student's parent or legal guardian, at a state-licensed foster home or at a state-licensed child care home or facility;
  - (3) At the time the student is initially placed in a state-operated institution, even if the student is later placed at a state-licensed foster home or at a state-licensed child care home or facility; or
  - (4) At the time the student is placed voluntarily, by a parent or legal guardian, in a state-operated institution or in a state-licensed child care home, facility, or program, located outside the student's school district of residence, including those defined in sections 25-01.2-01 and 50-11-00.1.
- b. A determination regarding the student's school district of residence made under subdivision a is valid until the September fifteenth following the determination. On that date and each September fifteenth thereafter, the placing agency or the entity funding the student's placement shall determine the district in which the student's custodial parent or legal guardian resides and shall notify the district that it is deemed to be the student's district of residence for purposes of this chapter. If, however, the student is placed in accordance with paragraph 4 of subdivision a and the placement is privately funded, the administrator of the facility or program in which the student is placed shall determine the student's school district of residence and provide the notification required by this subdivision.

**SECTION 3. AMENDMENT.** Section 27-20-02 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-02. Definitions.** As used in this chapter:

1. "Abandon" means:
  - a. As to a parent of a child not in the custody of that parent, failure by the noncustodial parent significantly without justifiable cause:
    - (1) To communicate with the child; or
    - (2) To provide for the care and support of the child as required by law; or
  - b. As to a parent of a child in that parent's custody:
    - (1) To leave the child for an indefinite period without making firm and agreed plans, with the child's immediate caregiver, for the parent's resumption of physical custody;

- (2) Following the child's birth or treatment at a hospital, to fail to arrange for the child's discharge within ten days after the child no longer requires hospital care; or
  - (3) To willfully fail to furnish food, shelter, clothing, or medical attention reasonably sufficient to meet the child's needs.
2. "Abandoned infant" means a child who has been abandoned before reaching the age of one year.
3. "Aggravated circumstances" means circumstances in which a parent:
  - a. Abandons, tortures, chronically abuses, or sexually abuses a child;
  - b. Fails to make substantial, meaningful efforts to secure treatment for the parent's addiction, mental illness, behavior disorder, or any combination of those conditions for a period equal to the lesser of:
    - (1) One year; or
    - (2) One-half of the child's lifetime, measured in days, as of the date a petition alleging aggravated circumstances is filed;
  - c. Engages in conduct prohibited under sections 12.1-20-01 through 12.1-20-08 or chapter 12.1-27.2, in which a child is the victim or intended victim;
  - d. Engages in conduct that constitutes one of the following crimes, or of an offense under the laws of another jurisdiction which requires proof of substantially similar elements:
    - (1) A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03, or subdivision a of subsection 1 of section 14-09-22 in which the victim is another child of the parent;
    - (2) Aiding, abetting, attempting, conspiring, or soliciting a violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is a child of the parent; or
    - (3) A violation of section 12.1-17-02 in which the victim is a child of the parent and has suffered serious bodily injury;
  - e. Engages or attempts to engage in conduct, prohibited under sections 12.1-17-01 through 12.1-17-04, in which a child is the victim or intended victim; or
  - f. Has been incarcerated under a sentence for which the latest release date is:
    - (1) In the case of a child age nine or older, after the child's majority; or
    - (2) In the case of a child, after the child is twice the child's current age, measured in days;



- g. Subjects the child to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner; or
  - h. Allows the child to be present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2.
4. "Child" means an individual who is:
    - a. Under the age of eighteen years and is ~~neither not married and cohabiting with spouse nor in the military service of the United States;~~ or
    - b. Under the age of twenty years with respect to a delinquent act committed while under the age of eighteen years.
  5. "Custodian" means a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of a court.
  6. "Delinquent act" means an act designated a crime under the law, including local ordinances or resolutions of this state, or of another state if the act occurred in that state, or under federal law, and the crime does not fall under subdivision c of subsection ~~48 and is not a traffic offense as defined in subsection 47~~ 19.
  7. "Delinquent child" means a child who has committed a delinquent act and is in need of treatment or rehabilitation.
  8. "Deprived child" means a child who:
    - a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian;
    - b. Has been placed for care or adoption in violation of law;
    - c. Has been abandoned by the child's parents, guardian, or other custodian;
    - d. 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;
    - e. Is in need of treatment and whose parents, guardian, or other custodian have refused to participate in treatment as ordered by the juvenile court;

- f. Was subject to prenatal exposure to chronic ~~and~~ or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner; or
  - g. Is present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2.
9. "Detention" means a physically secure facility with locked doors and does not include shelter care, attendant care, or home detention.
10. "Director" means the director of juvenile court or the director's designee.
11. "Fit and willing relative or other appropriate individual" means a relative or other individual who has been determined, after consideration of an assessment that includes a criminal history record investigation under chapter 50-11.3, to be a qualified person under chapter 30.1-27, and who consents in writing to act as a legal guardian.
- 44- 12. "Home" when used in the phrase "to return home" means the abode of the child's parent with whom the child formerly resided.
- 42- 13. "Juvenile court" means the district court of this state.
14. "Juvenile drug court" means a program established in a judicial district consisting of intervention and assessment of juveniles involved in forms of substance abuse; frequent drug testing; intense judicial and probation supervision; individual, group, and family counseling; substance abuse treatment; educational opportunities; and use of sanctions and incentives.
- 43- 15. "Permanency hearing" means a hearing, conducted with respect to a child who is in foster care, to determine the permanency plan for the child which includes:
- a. Whether and, if applicable, when the child will be returned to the parent;
  - b. Whether and, if applicable, when the child will be placed for adoption and the state will file a petition for termination of parental rights;
  - c. Whether and, if applicable, when a fit and willing relative or other appropriate individual will be appointed as a legal guardian;
  - d. In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian, whether and, if applicable, when the child will be placed in another planned permanent living arrangement;
  - e. In the case of a child who has been placed in foster care outside the state in which the home of the parents is located, or if the parents maintain separate homes, outside the state in which the home of the parent who was the child's primary caregiver is

located, whether ~~the~~ out-of-state placements have been considered. If the child is currently in an out-of-state placement, the court shall determine whether the placement continues to be appropriate and in the child's best interests; and

- f. In the case of a child who has attained age sixteen, the services needed to assist the child to make the transition from foster care to independent living.

44. 16. "Protective supervision" means supervision ordered by the court of children found to be deprived or unruly.

45. 17. "Relative" means:

- a. The child's grandparent, great-grandparent, sibling, half-sibling, aunt, great-aunt, uncle, great-uncle, nephew, niece, or first cousin;
- b. An individual with a relationship to the child, derived through a current or former spouse of the child's parent, similar to a relationship described in subdivision a;
- c. An individual recognized in the child's community as having a relationship with the child similar to a relationship described in subdivision a; or
- d. The child's stepparent.

46. 18. "Shelter care" means temporary care of a child in physically unrestricted facilities.

47. ~~"Traffic offense" means a violation of a law or local ordinance or resolution governing the operation of a vehicle upon the highways of this state, or the waterways within or adjoining this state, by a child who has been issued a valid operator's license or permit if one is required, other than manslaughter resulting from the operation of a motor vehicle in violation of section 12.1-16-02; negligent homicide in violation of section 12.1-16-03; and driving or being in actual physical control of a vehicle in violation of section 39-08-04, or an equivalent ordinance.~~

48. 19. "Unruly child" means a child who:

- a. Is habitually and without justification truant from school;
- b. Is habitually disobedient of the reasonable and lawful commands of the child's parent, guardian, or other custodian and is ungovernable or who is willfully in a situation dangerous or injurious to the health, safety, or morals of the child or others;
- c. Has committed an offense applicable only to a child, except for an offense committed by a minor fourteen years of age or older under subsection 2 of section 12.1-31-03 or an equivalent local ordinance or resolution;
- d. ~~Has committed a noncriminal traffic offense without ever having been issued an operator's license or permit if one was required;~~

- e. Has committed an offense in violation of section ~~39-08-18~~ or 5-01-08; or
- f. e. Is under the age of fourteen years and has purchased, possessed, smoked, or used tobacco or tobacco-related products in violation of subsection 2 of section 12.1-31-03; and
- g. f. In any of the foregoing instances is in need of treatment or rehabilitation.

49. 20. "Willfully" has the meaning provided in section 12.1-02-02.

**SECTION 4. AMENDMENT.** Section 27-20-06 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-06. Powers and duties of ~~juvenile supervisors~~ director of juvenile court.**

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~~ director shall:
  - a. Make investigations, reports, and recommendations to the juvenile court.
  - b. Receive and examine complaints and charges of delinquency, or 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 the juvenile supervisor's protection, supervision, or care by order of the court or other authority of law for delinquency or unruly conduct, or both.~~
  - 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~~ Issue a temporary custody order concerning a child who is under the juvenile supervisor's referred to the director's supervision or care as a delinquent, unruly, or deprived child if the juvenile supervisor has reasonable cause to believe that the child's health or safety is in imminent danger, or that the child 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~~ director does not have the powers of a law enforcement officer. ~~The juvenile supervisor may not conduct accusatory proceedings under this chapter against a child who is or may be under the juvenile supervisor's care or supervision.~~
  - f. Administer oaths.
  - g. Take acknowledgments of instruments for the purpose of this chapter.

- h. Make such temporary order not to exceed ninety-six hours for the custody and control of a child alleged to be deprived as may be deemed appropriate. The order must be reduced to writing within twenty-four hours, excluding holidays and weekends.
  - i. Perform all other functions designated by this chapter or under section 27-05-30 or by order of the court pursuant thereto, including, if qualified, those of a referee.
  - j. ~~Perform such functions relating to domestic relations matters as directed by the juvenile supervisor's appointing district judge, acting in accordance with section 27-05-29.~~ Issue an order to a law enforcement authority to transport a child to and from a specified location.
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. AMENDMENT.** Subsection 1 of section 27-20-10 of the North Dakota Century Code is amended and reenacted as follows:

1. Before a petition is filed, the ~~director of juvenile supervisor court~~ or other officer of the court designated by it, subject to its direction, may give counsel and advice to the parties and impose conditions for the conduct and control of the child with a view to an informal adjustment if it appears:
  - a. The admitted facts bring the case within the jurisdiction of the court;
  - b. Counsel, advice, and conditions, if any, for the conduct and control of the child without an adjudication would be in the best interest of the public and the child; and
  - c. The child and the child's parents, guardian, or other custodian consent thereto with knowledge that consent is not obligatory.

**SECTION 6. AMENDMENT.** Section 27-20-12 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-12. Transfer to another juvenile court within the state.**

1. If the child resides in a county of the state and the proceeding is commenced in a court of another county, the court, on motion of a party or on its own motion made prior to final disposition and in consultation with the court in the other county, may transfer the proceeding to the county of the child's residence for further action. Like transfer may be made if the residence of the child changes pending the proceeding. The proceeding must be transferred if the child has been adjudicated delinquent or unruly and other proceedings involving the child are pending in the juvenile court of the county of the child's residence.
2. Certified copies of all legal and social documents and records pertaining to the case on file with the clerk of the court must accompany the transfer.

**SECTION 7. AMENDMENT.** Section 27-20-13 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-13. Taking into custody.**

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~~ if there are reasonable grounds to believe:
    - (1) That the child is suffering from illness or injury or is in immediate danger from the child's surroundings, and that the child's removal is necessary; or
    - (2) That the child has run away from the child's parents, guardian, or other custodian; or
  - d. By order of the ~~juvenile supervisor~~ director made pursuant to subdivision h of subsection 1 of section 27-20-06.
2. The taking of a child into custody is not an arrest, except for the purpose of determining its validity under the Constitution of North Dakota or the Constitution of the United States.
3. A law enforcement officer may transport a child to and from detention.

**SECTION 8. AMENDMENT.** Section 27-20-14 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-14. Detention of child - Juvenile drug court exception.**

1. A child taken into custody may not be detained or placed in shelter care prior to the hearing on the petition unless the child's detention or care is required to protect the person or property of others or of the child or because the child may abscond or be removed from the jurisdiction of the court or because the child has no parent, guardian, or custodian or other person able to provide supervision and care for the child and return the child to the court when required, or an order for the child's detention or shelter care has been made by the court pursuant to this chapter.
2. If a child is participating in a juvenile drug court program, the drug court may order the child detained. The child may be detained twice during the child's participation in the program but the total period of detention under this subsection may not exceed four days in a one-year period.

**SECTION 9. AMENDMENT.** Section 27-20-15 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-15. Release or delivery to court.**

1. A person taking a child into custody, with all reasonable speed and without first taking the child elsewhere, shall:
  - a. Release the child to the child's parent, guardian, custodian, or other responsible adult able and willing to assume custody of the child, upon that individual's promise to bring the child before the court when requested by the court, unless the child's detention or shelter care is warranted or required under section 27-20-14; or
  - b. Bring the child before the court or deliver the child to a detention or shelter care facility designated by the court or to a medical facility if the child is believed to suffer from a serious physical condition or illness which requires prompt treatment. The person taking the child into custody shall promptly give ~~written~~ notice thereof, together with a statement of the reason for taking the child into custody, to a parent, guardian, or other custodian and to the court. Any temporary detention or questioning of the child necessary to comply with this subsection must conform to the procedures and conditions prescribed by this chapter and rules of court.
2. If a parent, guardian, or other custodian, when requested, fails to bring the child before the court as provided in subsection 1, the court may issue its warrant directing that the child be taken into custody and brought before the court.
3. If a child is ordered detained by a juvenile drug court, notice under this section is not required.

<sup>149</sup> **SECTION 10. AMENDMENT.** Section 27-20-17 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-17. Release from detention or shelter care - Hearing - Conditions of release.**

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 director~~, the intake officer, or other authorized officer of the court shall immediately make an investigation and release the child unless it appears that the child's detention or shelter care is warranted or required under section 27-20-14.
2. If the child is not released, a judge or referee shall hold a detention or shelter care hearing promptly and not later than ninety-six hours after 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 the child's detention or shelter care is required under section 27-20-14.

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<sup>149</sup> Section 27-20-17 was also amended by section 10 of House Bill No. 1122, chapter 119.

A hearing is not required if the child has been ordered detained by a juvenile drug court. Reasonable notice thereof, either oral or written, stating the time, place, and purpose of the detention or shelter care hearing must be given to the child and, if they can be found, to the child's 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.

3. If continued shelter care is required, the judge or referee may order that the child be kept in shelter care for no more than sixty days from the date of the shelter care hearing.
4. As a condition to the child's release from shelter care, the court may order a parent, guardian, custodian, or any other member of the household in which the child resides to vacate the child's residence if probable cause exists to believe that the parent, guardian, custodian, or other member of the household has committed a sexual offense with or against the child, pursuant to sections 12.1-20-03 through 12.1-20-07 or section 12.1-20-11, and the presence of the alleged sexual offender in the child's residence presents a danger to the child's life or physical, emotional, or mental health. The court may order that the parent, guardian, or custodian not allow contact with an identified person if the court determines the order is in the best interests of the child.
5. If the child is not released and a parent, guardian, or custodian has not been notified of the hearing, did not appear or waive appearance at the hearing, and files an affidavit showing these facts, the court shall rehear the matter without unnecessary delay and order the child's release, unless it appears from the hearing that the child's detention or shelter care is required under section 27-20-14.

**SECTION 11. AMENDMENT.** Section 27-20-19 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-19. Petition - Preliminary determination.** A petition alleging delinquency or unruliness under this chapter may not be filed unless must be reviewed by the juvenile supervisor director, the court, or other person authorized by the court has determined and endorsed upon the petition that to determine whether the filing of the petition is in the best interest of the public and the child.

**SECTION 12. AMENDMENT.** Section 27-20-20 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-20. Petition - Who may make prepare and file - Review.** Subject to section 27-20-19 the A petition may be made prepared and filed by the state's attorney. A petition may also be prepared by any other person, including a law enforcement officer, who has knowledge of the facts alleged or is informed and believes that they are true. A petition prepared by any person other than a state's attorney may not be filed unless the director, the court, or other person authorized by the court has determined the filing of the petition is in the best interest of the public and the child.

**SECTION 13. AMENDMENT.** Section 27-20-24 of the North Dakota Century Code is amended and reenacted as follows:



**27-20-24. Conduct of hearings.**

1. Hearings under this chapter must be conducted by the court without a jury, in an informal but orderly manner, and separately from other proceedings not included in section 27-20-03.
2. If the hearing has not been held within the time limit, or any extension thereof, required by subsection 1 of section 27-20-22, the petition must be dismissed.
3. The state's attorney upon request of the court shall present the evidence in support of any allegations of the petition not admitted and otherwise conduct the proceedings on behalf of the state.
4. ~~The~~ Except for informal adjustments under section 27-20-10, the proceedings must be recorded by stenographic notes or by electronic, mechanical, or other appropriate means.
5. Hearings are open to the public if the purpose of the hearing is to declare a person in contempt of court or to consider a petition alleging an offense identified under subdivision b of subsection 1 of section 27-20-34 or subsection 2 of section 27-20-34. The general public must be excluded from other hearings under this chapter. In hearings from which the general public is excluded, only the parties, their counsel, witnesses, victims, ~~and other persons accompanying a party for that person's assistance,~~ and any other persons as the court finds have a proper interest in the proceedings ~~or in the work of the court~~ may be admitted by the court. The court may temporarily exclude the child or other person from the hearing except while allegations of that child's delinquency or unruly conduct are being heard if, after being warned by the court that disruptive conduct will cause removal from the courtroom, the child or other person persists in conduct that justifies removal from the courtroom.

<sup>150</sup> **SECTION 14. AMENDMENT.** Section 27-20-26 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-26. Right to counsel - Exceptions.**

1. Except as otherwise provided under in this chapter section, a party who is indigent and unable to employ legal counsel is entitled to representation by legal counsel at public expense at custodial, post-petition, and informal adjustment stages of proceedings under this chapter and, if as a needy person the party is unable to employ counsel, to have the court provide counsel for the party. During the informal adjustment stage of a proceeding only the child, if determined to be indigent, is entitled to counsel at public expense. In proceedings regarding allegations of unruliness or delinquency, a child's parent, legal guardian, or custodian, if determined to be indigent, is entitled to

<sup>150</sup> Section 27-20-26 was also amended by section 12 of House Bill No. 1122, chapter 119.

counsel at public expense only during the dispositional stage of the proceedings. If a party appears without counsel the court shall ascertain whether the party knows of the party's right to the party may be represented by counsel and to be provided with that the party is entitled to counsel by the court if the party is a needy person at public expense if indigent. The court may continue the proceeding to enable a party to obtain counsel and shall provide, subject to this section, counsel must be provided for an unrepresented ~~needy person indigent party~~ upon the ~~person's~~ party's request. Counsel must be provided for a child not represented by the child's parent, guardian, or custodian at custodial, post-petition, and informal adjustment stages of proceedings under this chapter. If the interests of two or more parties conflict, separate counsel must be provided for each of them.

2. A ~~needy person~~ An indigent party is one who at the time of requesting counsel is unable, without undue financial hardship, to provide for full payment of legal counsel and all other necessary expenses for representation. A child is not to be considered ~~needy indigent~~ under this section if the child's ~~parents or parent~~ can, without undue financial hardship, provide full payment for legal counsel and other expenses of representation. Any parent entitled to the custody of a child involved in a proceeding under this chapter is, unless undue financial hardship would ensue, responsible for providing legal counsel and for paying other necessary expenses of representation for the parent's child. The court may enforce performance of this duty by appropriate order. ~~As used in this subsection, the word "parent" includes adoptive parents.~~

**SECTION 15. AMENDMENT.** Section 27-20-28 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-28. Investigation and report.**

1. If the allegations of a petition are admitted by a party or notice of a hearing under section 27-20-34 has been given, the court, prior to the hearing on need for treatment or rehabilitation and disposition, may direct that a social study and report in writing to the court be made by the ~~juvenile supervisor~~ director or other person designated by the court, concerning the child, the child's family and environment, and other matters relevant to disposition of the case. If the allegations of the petition are not admitted and notice of a hearing under section 27-20-34 has not been given, the court may not direct the making of the study and report until after the court has heard the petition upon notice of hearing given pursuant to this chapter and the court has found that the child committed a delinquent act or is an unruly or deprived child.
2. During the pendency of any proceeding the court ~~may~~:
  - a. May order the child to be examined at a suitable place by a physician, psychologist, or certified addiction counselor ~~and may also~~;
  - b. May order the child tested by appropriate forensic methods to determine whether the child has been exposed to a controlled substance or other substance considered injurious to the child's health; or

- c. May order medical or surgical treatment of a child who is suffering from a serious physical condition or illness, or alcohol or drug abuse, which in the opinion of a licensed physician requires prompt treatment, even if the parent, guardian, or other custodian has not been given notice of a hearing, is not available, or without good cause informs the court of that person's refusal to consent to the treatment.

**SECTION 16. AMENDMENT.** Section 27-20-30 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-30. Disposition of deprived child.**

1. If the child is found to be a deprived child, the court may make any of the following orders of disposition best suited to the protection and physical, mental, and moral welfare of the child:
  - a. Permit the child to ~~remain~~ reside with the child's parents, guardian, or other custodian, subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of the child.
  - b. Subject to conditions and limitations as the court prescribes, transfer temporary legal custody to any of the following:
    - (1) ~~Any individual who, after study by the juvenile supervisor or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child.~~
    - (2) An agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child.
    - (3) (2) The director of the county social service board or other public agency authorized by law to receive and provide care for the child.
    - (4) ~~An individual in another state with or without supervision by an appropriate officer under section 27-20-40.~~
  - c. Without making any of the orders otherwise provided in this section, transfer custody of the child to the juvenile court of another state if authorized by and in accordance with section 27-20-39 if the child is or is about to become a resident of that state.
  - d. Require the parents, guardian, or other custodian to participate in treatment.
  - e. Appoint a fit and willing relative or other appropriate individual as the child's legal guardian.
  - f. In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian,

establish, by order, some other planned permanent living arrangement.

2. Unless a child found to be deprived is found also to be delinquent or unruly and not amenable to treatment, the child may not be committed to or confined in an institution or other facility designed or operated for the benefit of delinquent children.

**SECTION 17. AMENDMENT.** Section 27-20-31 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-31. Disposition of delinquent child.** If the child is found to be a delinquent child, the court may make any of the following orders of disposition best suited to the child's treatment, rehabilitation, and welfare:

1. Any order authorized by section 27-20-30 for the disposition of a deprived child;
2. Placing the child on probation under the supervision of the ~~juvenile supervisor~~ director, probation officer, or other appropriate officer of the court or of the court of another state as provided in section 27-20-41 or the director of the county social service board under conditions and limitations the court prescribes;
3. Ordering the child to pay a fine if the delinquent act committed by the child constitutes manslaughter resulting from the operation of a motor vehicle in violation of section 12.1-16-02; negligent homicide in violation of section 12.1-16-03; or driving or being in actual physical control of a vehicle in violation of section 39-08-01, or an equivalent ordinance. The court may suspend the imposition of a fine imposed pursuant to this subsection upon such terms and conditions as the court may determine. Fines collected pursuant to this subsection must be paid into the county treasury for disposition pursuant to section 29-27-02.1;
4. ~~Placing the child in an institution, camp, or other facility for delinquent children operated under the direction of the court or other local public authority;~~
5. ~~Committing the child to the division of juvenile services or to another state department to which commitment of delinquent or unruly children may be made. When necessary, the commitment order may provide that the child initially be placed in a secure facility;~~
6. ~~5.~~ Ordering the child to make monetary restitution to the victim of the offense or to complete a specified number of hours of community service as determined by the court, or both;
7. ~~6.~~ Ordering the periodic testing for the use of illicit drugs or alcohol pursuant to rules or policies adopted by the supreme court; or
8. ~~7.~~ Under section 27-20-31.1, order the driver's license or permit of the child to be delivered to the juvenile supervisor, probation officer, or other appropriate officer of the court and to inform the director of the department of transportation of the child's suspension of driving privileges and the duration of the suspension of privileges. Ordering the child's participation in a juvenile drug court program.

**SECTION 18. AMENDMENT.** Section 27-20-32.1 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-32.1. Court order required for removal of child.** An order of disposition or other adjudication in a proceeding under this chapter, in those cases in which a child is removed from the home of a ~~relative by birth, marriage, or adoption~~ parent, custodian, or guardian for the reason that continuation in such home would be contrary to the welfare of such child, must specifically state that a continuation of the child in the home of the ~~relative~~ parent, custodian, or guardian would be contrary to the welfare of the child.

**SECTION 19.** Section 27-20-32.3 of the North Dakota Century Code is created and enacted as follows:

**27-20-32.3. Definitions - Active efforts - When required.** When an agency is seeking to effect a foster care placement of, or termination of parental rights to an Indian child, the court shall require active efforts as set forth in 25 U.S.C. section 1912(d).

**SECTION 20. AMENDMENT.** Subsection 4 of section 27-20-34 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~The transfer terminates the jurisdiction of the juvenile court over the child with respect to the delinquent acts alleged in the petition. In addition, any Any transfer under subdivision b or e of subsection 4 operates to terminate the juvenile court's jurisdiction over the child with respect to any future offense if the child is ultimately convicted of the offense giving rise to the transfer.~~

**SECTION 21. AMENDMENT.** Subsections 2 and 3 of section 27-20-36 of the North Dakota Century Code are amended and reenacted as follows:

2. An order of disposition committing a delinquent or unruly child to the division of juvenile services continues in force for not more than ~~two years~~ twelve months, excluding any period of time the child is on parole from an institution, or until the child is sooner discharged by an institution.
  - a. The court which made the order may extend its duration for additional ~~two-year~~ twelve-month periods subject to like discharge, if:
    - (1) A hearing is held upon motion of the division, or on the court's own motion, prior to the expiration of the order;
    - (2) Reasonable notice of the hearing and an opportunity to be heard are given to the child and the parent, guardian, or other custodian; and
    - (3) The court finds that the extension is necessary for the treatment or rehabilitation of the child.
  - b. A permanency hearing must be conducted within thirty days after a court determines that aggravated circumstances of the type described in subdivisions a, c, d, or e of subsection 3 of section 27-20-02 exist, or within twelve months after a child, subject to an

order of disposition under this subsection, is considered to have entered foster care, or is continued in foster care following a previous permanency hearing. The permanency hearing may be conducted:

- (1) By the division of juvenile services as a placement hearing under chapter 27-21; or
  - (2) By the court, if the court requires, or if it appears that an appropriate permanency plan could not be carried out without exceeding the authority of the division of juvenile services.
3. Except as provided in subsection 2, an order of disposition pursuant to which a child is placed in foster care may not continue in force for more than twelve months after the child is considered to have entered foster care. Before the extension of any court order limited under this subsection, a permanency hearing must be conducted. Any other order of disposition may not continue in force for more than ~~two years~~ twelve months.

**SECTION 22. AMENDMENT.** Subsection 3 of section 27-20-37 of the North Dakota Century Code is amended and reenacted as follows:

3. Any party to the proceeding, the director of juvenile supervisor court or other person having supervision or legal custody of or an interest in the child may petition the court for the relief provided in this section. The petition must set forth in concise language the grounds upon which the relief is requested.

**SECTION 23. AMENDMENT.** Subsection 1 of section 27-20-40 of the North Dakota Century Code is amended and reenacted as follows:

1. If a juvenile court of another state which has adopted the Uniform Juvenile Court Act, or a substantially similar Act which includes provisions corresponding to sections 27-20-39 and 27-20-40, requests a juvenile court of this state to accept jurisdiction of a child found by the requesting court to have committed a delinquent act or to be an unruly or deprived child, and the court of this state finds, after investigation that the child is, or is about to become, a resident of the county in which the court presides, it shall promptly and not later than fourteen days after receiving the request issue its acceptance in writing to the requesting court and direct its director of juvenile supervisor court or other person designated by it to take physical custody of the child from the requesting court and bring the child before the court of this state or make other appropriate provisions for the child's appearance before the court.

**SECTION 24. AMENDMENT.** Subsection 1 of section 27-20-42 of the North Dakota Century Code is amended and reenacted as follows:

1. Upon receiving a request of a juvenile court of another state which has adopted the Uniform Juvenile Court Act, or a substantially similar Act which includes provisions corresponding to sections 27-20-41 and 27-20-42 to provide supervision of a child under the jurisdiction of that court, a court of this state may issue its written acceptance to the requesting court and designate its director of juvenile supervisor court,

probation officer, or other appropriate officer who is to provide supervision, stating the probable cost per day therefor.

**SECTION 25. AMENDMENT.** Section 27-20-44 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-44. Termination of parental rights.**

1. The court by order may terminate the parental rights of a parent with respect to the parent's child if:
  - a. The parent has abandoned the child;
  - b. The child is subjected to aggravated circumstances as defined under subsection 3 of section 27-20-02;
  - c. The child is a deprived child and the court finds:
    - (1) The conditions and causes of the deprivation are likely to continue or will not be remedied and that by reason thereof the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm; or
    - (2) The child has been in foster care, in the care, custody, and control of the department, or a county social service board, or, in cases arising out of an adjudication by the juvenile court that a child is an unruly child, the division of juvenile services, for at least four hundred fifty out of the previous six hundred sixty nights; or
    - ~~(3) A court of competent jurisdiction has convicted the child's parent of one of the following crimes, or of an offense under the laws of another jurisdiction which requires proof of substantially similar elements:~~
      - ~~(a) A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is another child of the parent;~~
      - ~~(b) Aiding, abetting, attempting, conspiring, or soliciting a violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is a child of the parent; or~~
      - ~~(c) A violation of section 12.1-17-02 in which the victim is a child of the parent and has suffered serious bodily injury; or~~
  - ~~e.~~ d. The written consent of the parent acknowledged before the court has been given.
2. If the court does not make an order of termination of parental rights, it may grant an order under section 27-20-30 if the court finds from clear and convincing evidence that the child is a deprived child.

**SECTION 26. AMENDMENT.** Subsection 2 of section 27-20-45 of the North Dakota Century Code is amended and reenacted as follows:

2. If both of the natural parents of the child are not named in the petition either as petitioner or as respondent, the court shall cause inquiry to be made of the petitioner and other appropriate persons in an effort to identify an unnamed parent. The inquiry must include, to the extent necessary and appropriate, all of the following:
  - a. Whether any man is presumed to be the father of the child under ~~the Uniform Parentage Act~~ chapter 14-20.
  - b. Whether the natural mother of the child was cohabiting with a man at the time of conception or birth of the child.
  - c. Whether the natural mother of the child has received from any man support payments or promises of support with respect to the child or in connection with her pregnancy.
  - d. Whether any person has formally or informally acknowledged or declared that person's possible parentage of the child.
  - e. Whether any person claims any right to custody of the child.

**SECTION 27. AMENDMENT.** Section 27-20-48 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-48. Guardian ad litem.** The court at any stage of a proceeding under this chapter, on application of a party or on its own motion, shall appoint a lay guardian ad litem for a child who is a party to the proceeding if the child has no parent, guardian, or custodian appearing on the child's behalf or their interests conflict with the child's or in any other case in which the interests of the child require a guardian. A party to the proceeding or that party's employee or representative may not be appointed.

**SECTION 28. AMENDMENT.** Section 27-20-48.1 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-48.1. Appointment of legal guardian.**

- ~~1. In a proceeding under chapter 30.1-27, the~~ The court may:
  - a. ~~Without terminating parental rights, appoint a fit and willing relative or other appropriate individual as the child's legal guardian if the court has determined that a lawful basis exists for terminating parental rights, but the child is unlikely to be placed for adoption; or~~
  - b. ~~Appoint a fit and willing relative or other appropriate individual as the child's legal guardian if the child has not been placed for adoption within twelve months after a termination of all parental rights.~~
2. An individual appointed as a legal guardian has:
  - a. If there is a parent with remaining parental rights, the rights of a legal custodian; and



- b. If there is no parent with remaining parental rights, the rights of a legal custodian and the authority to consent to the child's adoption, marriage, enlistment in the armed forces of the United States, and surgical and other medical treatment establish a guardianship as a dispositional alternative if a child has been adjudicated as deprived, unruly, or delinquent.

**SECTION 29.** Section 27-20-48.2 of the North Dakota Century Code is created and enacted as follows:

**27-20-48.2. Powers and duties of guardian of child.** A guardian of a child has the powers and responsibilities of a legal custodian if there is a parent with remaining parental rights. If there is no parent with remaining parental rights, the guardian has the rights of a legal custodian and the authority to consent to the child's adoption, marriage, enlistment in the armed forces of the United States, and surgical and other medical treatment. A guardian is not liable to third persons by reason of the parental relationship for acts of the child. In particular, and without qualifying the foregoing, a guardian has the following powers and duties:

1. The guardian must take reasonable care of the child's personal effects and commence protective proceedings if necessary to protect other property of the child.
2. The guardian may receive money payable for the support of the ward to the child's parent, guardian, or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship, or custodianship. The guardian also may receive money or property of the child paid or delivered by virtue of section 30.1-26-03. Any sums so received must be applied to the child's current needs for support, care, and education. The guardian must exercise due care to conserve any excess for the child's future needs unless a conservator has been appointed for the estate of the child, in which case excess must be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for the guardian's services except as approved by order of court or as determined by a duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support the child or to pay sums for the welfare of the child.
3. The guardian is empowered to facilitate the child's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the child resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage or adoption of the child.
4. A guardian shall file an annual report with the court informing the court of the status or condition of the child and provide a copy of the report to the child. The report must include changes that have occurred since the previous reporting period and an accounting of the child's estate. The guardian shall report whether the child has resided in an institution, whether the child continues to require guardianship, and whether any powers of the guardian should be increased or limited. The filing of a report and its acceptance by the court or clerk of district court does not

constitute an adjudication or a determination of the merits of the report nor does the filing of the report constitute the court's approval of the report. The office of state court administrator shall provide printed forms that may be used to fulfill reporting requirements.

**SECTION 30.** Section 27-20-48.3 of the North Dakota Century Code is created and enacted as follows:

**27-20-48.3. Termination of appointment of guardian - General.** A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian, or upon the child's death, adoption, marriage, or attainment of majority, but termination does not affect the guardian's liability for prior acts nor the guardian's obligation to account for funds and assets of the child.

**SECTION 31.** Section 27-20-48.4 of the North Dakota Century Code is created and enacted as follows:

**27-20-48.4. Resignation or removal proceedings.**

1. A guardian may petition for permission to resign. A petition for permission to resign may include a request for appointment of a successor guardian. Resignation of a guardian does not terminate the guardianship until it has been approved by the court.
2. Any party to the proceeding in which the child's status was adjudicated, the director, or the child, if fourteen or more years of age, may petition for removal of a guardian on the grounds that the removal would be in the best interest of the child. A petition for removal may include a request for appointment of a successor guardian.
3. After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.
4. If, at any time in the proceeding, the court determines that the interests of the child are, or may be, inadequately represented, it may appoint an attorney to represent the child, giving consideration to the preference of the child if the child is fourteen or more years of age.

**SECTION 32. AMENDMENT.** Section 27-20-50 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-50. Protective order.** ~~On~~ At any stage of the proceedings, upon application of a party or on the court's own motion, the court may make an order restraining or otherwise controlling the conduct of a person if:

1. ~~An order of disposition of a delinquent, unruly, or deprived child has been or is about to be made in a proceeding under this chapter;~~
2. The court finds that the conduct:
  - a. Is or may be detrimental or harmful to the child; ~~and~~ or
  - b. Will tend to defeat the execution of ~~the~~ an order of disposition; and

- 3- 2. Due notice of the application or motion and the grounds therefor and an opportunity to be heard ~~thereon~~ have been given to the person against whom the order is directed.

**SECTION 33. AMENDMENT.** Section 27-20-54 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-54. Destruction of juvenile court records.**

1. ~~All~~ Except as otherwise required under section 25-03.3-04, all juvenile court records must be ~~maintained~~ retained and disposed of pursuant to rules and ~~procedures~~ policies established by the North Dakota supreme court.
2. Upon the final destruction of a file or record, the proceeding must be treated as if it never occurred. The juvenile court shall notify each agency named in the file or record of the destruction. All index references, except those which may be made by the director of the department of transportation, must be deleted, and upon. Each agency, except the director of the department of transportation, upon notification of the destruction of a file or record, shall destroy all files, records, and references to the child's apprehension, detention, and referral to the juvenile court and any record of disposition made by the juvenile court. Upon inquiry in any matter the child, the court, law enforcement officers, and representatives of agencies, except the director of the department of transportation, shall properly reply that no record exists with respect to the child. The juvenile court shall notify each agency or official therein named. Each law enforcement agency and law enforcement officer except the director of the department of transportation, upon receipt of a copy of the order, shall destroy all files, records, and references to the child pertaining to the child's apprehension, detention, and referral to the juvenile court and any record of disposition made by the juvenile court.

**SECTION 34. AMENDMENT.** Section 27-20-59 of the North Dakota Century Code is amended and reenacted as follows:

**27-20-59. Short title.** This chapter may be cited as the ~~Uniform~~ Juvenile Court Act.

**SECTION 35. AMENDMENT.** Section 54-12-01.3 of the North Dakota Century Code is amended and reenacted as follows:

**54-12-01.3. Judicial officers - Legal defense - Indemnification.** The attorney general shall appear and defend any supreme court justice, supreme court surrogate justice, district court judge, district court surrogate judge, judicial referee, or ~~director of juvenile supervisor court~~ of this state in any action founded upon an act or omission arising out of performance of an official duty. If the attorney general determines that the attorney general or an assistant attorney general is unable to defend the judicial officer, the attorney general shall employ a special assistant attorney general to represent the judicial officer. The state shall indemnify the supreme court justice, supreme court surrogate justice, district court judge, district court surrogate judge, judicial referee, or ~~director of juvenile supervisor court~~ of this state for all reasonable costs, including attorney's fees, incurred by or awarded against the judicial officer in the action.

**SECTION 36. REPEAL.** Sections 27-05-29, 27-20-01, and 27-20-35 of the North Dakota Century Code are repealed.

**SECTION 37. LEGISLATIVE COUNCIL STUDY - INDIAN CHILD WELFARE.** During the 2007-08 interim, the legislative council shall consider studying the application of and the desirability of changing the law relating to the welfare of Indian children when placed in the care of individuals other than parents and the effect of the Indian Child Welfare Act on state law. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Approved April 12, 2007

Filed April 13, 2007

# JUDICIAL PROCEDURE, CIVIL

## CHAPTER 275

### SENATE BILL NO. 2221

(Senator Holmberg)

## BANKRUPTCY PROCEEDINGS

AN ACT to create and enact a new section to chapter 28-20 of the North Dakota Century Code, relating to the effect of bankruptcy on a judgment lien; to amend and reenact section 47-18-18 of the North Dakota Century Code, relating to declaration of a homestead; and to repeal sections 28-20-30, 28-20-31, and 28-20-32 of the North Dakota Century Code, relating to cancellation of judgment against bankrupts, service in bankruptcy proceedings, and affidavits in bankruptcy proceedings.

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

**SECTION 1.** A new section to chapter 28-20 of the North Dakota Century Code is created and enacted as follows:

#### Effect of bankruptcy on judgment lien.

1. If a judgment lien appears on a judgment debtor's real property and the debtor is later the subject of bankruptcy proceedings in which the judgment lien is avoided or set aside, the judgment lien may be terminated of record by filing a certified copy of the bankruptcy court lien avoidance judgment.
2. A prebankruptcy petition judgment does not create a lien on real property that is acquired by the judgment debtor after the filing of the bankruptcy petition which may be established by filing a copy of the discharge.
3. A copy of the discharge may be filed to remove a judgment lien as a cloud on the homestead set aside to the bankruptcy debtor.
4. Subsection 2 does not apply if the judgment creditor files a certified copy of an order or a judgment of the bankruptcy court which declares the debt is nondischargeable. A judgment creditor may record lis pendens stating the judgment creditor has filed a nondischargability action in bankruptcy court. This section does not apply to debts automatically excepted from discharge under section 523 of the United State Bankruptcy Code [11 U.S.C. 523].
5. As used in this section, "files" or "filing" means a filing with the clerk of district court in the county in which the judgment is docketed or transcribed.

**SECTION 2. AMENDMENT.** Section 47-18-18 of the North Dakota Century Code is amended and reenacted as follows:

**47-18-18. Declaration of homestead - How executed and acknowledged.**

In order to select a homestead the claimant ~~must~~ shall execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead, and file the declaration for record.

A finding claim of a homestead ~~exemption~~ by the ~~bankruptcy court on behalf of a person discharged from debts pursuant to the Act of the Congress of the United States known as "an act to establish a uniform system of bankruptcy throughout the United States, approved July 1, 1898", as amended [ch. 541, 30 Stat. 544], shall be~~ a debtor who received a discharge is a declaration of homestead.

Filing for record in the recorder's office of the county where the homestead is located a certified copy with the legal description of the ~~bankrupt's discharge of bankruptcy~~ constitutes notice that the property ~~has been found to be~~ is a homestead and exempt from ~~those judgments determined by the bankruptcy court to be discharged.~~

**SECTION 3. REPEAL.** Sections 28-20-30, 28-20-31, and 28-20-32 of the North Dakota Century Code are repealed.

Approved April 30, 2007

Filed May 1, 2007

**CHAPTER 276****SENATE BILL NO. 2170**  
(Senators Lyson, Triplett)  
(Representatives Klemin, Kretschmar)**PAYMENT TO SHERIFF UPON LEVY**

AN ACT to create and enact a new section to chapter 28-21 of the North Dakota Century Code, relating to the amount payable to the sheriff by a depository institution or credit union under a notice of levy.

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

**SECTION 1.** A new section to chapter 28-21 of the North Dakota Century Code is created and enacted as follows:

**Amount payable to sheriff by depository institution or credit union.** The amount payable to a sheriff by a depository institution or credit union that has been served with a notice of levy is limited to the lesser of the amount necessary to satisfy the execution or the deposit account balance of the debtor as shown by the deposit institution's or credit union's records at the time the notice of levy is served.

Approved March 2, 2007  
Filed March 2, 2007

**CHAPTER 277****SENATE BILL NO. 2284**

(Senators Hacker, Triplett)

(Representatives Delmore, Glassheim, Koppelman)

**PERSONAL INJURY RECOVERY PROCESS  
EXEMPTION**

AN ACT to amend and reenact subsection 4 of section 28-22-03.1 of the North Dakota Century Code, relating to exemption from process for proceeds of a wrongful death or personal bodily injury recovery; and to provide for a legislative council study.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 28-22-03.1 of the North Dakota Century Code is amended and reenacted as follows:

4. The debtor's right to receive, or property that is traceable to:
  - a. A payment, not to exceed ~~seven~~ fifteen 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~~ fifteen thousand ~~five~~ hundred dollars, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.
  - c. A social security benefit, except that the benefit is not exempt for enforcement of any order for the support of a dependent child.
  - d. Veteran's disability pension benefits, not including military retirement pay, except that the benefits are not exempt from process levy or sale for enforcement of any order for the support of a dependent child.

**SECTION 2. LEGISLATIVE COUNCIL STUDY - EXEMPTIONS FROM PROCESS.** The legislative council shall consider studying during the 2007-08 interim the exemption provisions found in North Dakota Century Code chapter 28-22, including determining whether the exemptions in the current form continue to serve the historical purposes of protecting debtors from creditors and providing debtors with the basic necessities of life, so that debtors will not be left destitute and public charges of the state. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Approved April 26, 2007  
Filed April 27, 2007



**CHAPTER 278****SENATE BILL NO. 2277**

(Senator Holmberg)

**SALES UNDER EXECUTION**

AN ACT to amend and reenact sections 28-23-01, 28-23-02, 28-23-04, 28-23-05, 28-23-06, 28-23-07, 28-23-09, 28-23-11, 28-23-12, 28-23-13, and 28-23-14 of the North Dakota Century Code, relating to sales under execution.

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

**SECTION 1. AMENDMENT.** Section 28-23-01 of the North Dakota Century Code is amended and reenacted as follows:

**28-23-01. Sale of personal property - Notice of sale.** The officer who levies upon personal property, other than crops or perishable property, ~~by virtue of an execution, before the officer proceeds to sell the same,~~ shall ~~cause~~ give public notice ~~to be given~~ of the time and place of ~~such~~ the sale by advertisement published once each week for two successive weeks next before the day of sale; in ~~some~~ the county's official newspaper printed in the county, ~~such newspaper to be designated by the judgment creditor or the judgment creditor's attorney, or, in case no newspaper is published therein,~~ by posting advertisements in five public places in the county.

**SECTION 2. AMENDMENT.** Section 28-23-02 of the North Dakota Century Code is amended and reenacted as follows:

**28-23-02. Sale of crops.** If the levy is upon ~~crops, when~~ harvested, ~~such~~ crops, at the option of the judgment creditor, ~~the crops~~ may be sold in the nearest usual market ~~therefor for crops,~~ at any time, after such levy, ~~in the usual manner,~~ at the market price ~~thereof in such market and~~ without publishing or ~~posting~~ notice of sale. In that case, ~~however,~~ the notice of levy, or a subsequent notice to be served as the notice of levy is served, must state where and when ~~such~~ the crops will be sold. Should the judgment debtor, or the judgment debtor's agent or attorney, at the time ~~such~~ the levy is made, give notice to the officer making the levy that the judgment debtor intends to settle the judgment, the officer shall hold the grain six days before making sale ~~thereof of the grain.~~ The usual and reasonable charges for the sale and transportation of ~~such~~ the grain to market must be deemed proper expenses chargeable as costs in ~~such~~ the proceedings, and in case the notice above provided for is served on the officer there also must be chargeable reasonable charges for storing ~~said~~ the grain.

**SECTION 3. AMENDMENT.** Section 28-23-04 of the North Dakota Century Code is amended and reenacted as follows:

**28-23-04. Sale of real property - Notice of sale - Contents.**

1. Before any real property or interest ~~therein~~ in real property taken on execution may be sold, the officer making the sale shall give public notice of the time and place of the sale:

1. ~~If a newspaper is printed in the county where the real property to be sold is situated, the notice must be given by advertisement in a the county's official newspaper printed in the county once a week for three successive weeks, the last publication to be at least ten days prior to before the making of the sale; and~~
2. ~~In case no newspaper is printed in the county, then the officer making the sale shall cause the advertisement to be made by posting a copy of the advertisement on the outer door of the courthouse or building where the district court of the county was last held, and in five other public places in the county.~~

Except for parties who have an ownership interest in the real property ~~subject to foreclosure of a mortgage under chapter 32-19~~, the names of all defendants may be omitted from the public notice. If the names of the nonowner defendants are omitted, a copy of the public notice must be mailed to all defendants whose names are omitted at least ten days ~~prior to~~ before the date of the sale. Service by mail is complete upon mailing. All sales made without notice as provided in this section must be set aside by the court to which the execution is returnable, upon motion to confirm the sale.

**SECTION 4. AMENDMENT.** Section 28-23-05 of the North Dakota Century Code is amended and reenacted as follows:

**28-23-05. Where sale of real property made.** All sales of real property, or any interest ~~therein, in real property~~ under execution, must be held ~~at the courthouse, if there is one in the county in which such the real property is situated, and if there is no courthouse, then at the door of the house in which the district court was last held, and if there is no courthouse and no district court has been held in the county, then~~ or at such a place within the county as the sheriff shall designate designates in the sheriff's notice of sale, or the place designated in the published notice of sale if the foreclosure is by advertisement.

**SECTION 5. AMENDMENT.** Section 28-23-06 of the North Dakota Century Code is amended and reenacted as follows:

**28-23-06. Place of sale of personal property.** If the owner of the personal property levied on, other than crops, agrees to keep ~~such the~~ the property safely until the day of sale and requests that the sale be held on the premises where the property is seized, the sale must be held on the premises where the property is seized. Otherwise the sale may be had at the place designated by the sheriff in the notice of sale. ~~This provision also applies in case of foreclosure by advertisement.~~

**SECTION 6. AMENDMENT.** Section 28-23-07 of the North Dakota Century Code is amended and reenacted as follows:

**28-23-07. Time and manner of sale.** All sales of property under execution must be made at public auction to the highest bidder, between the hours of nine a.m. and four p.m. After sufficient property has been sold to satisfy the execution, no more property may be sold. ~~No A sheriff or other officer, nor a or the sheriff's or officer's deputy, holding the execution or making the sale of property, either personal or real, may not become a purchaser or be interested directly or indirectly in any purchase at such the sale, and every.~~ A purchase so made must be considered fraudulent and void. ~~When~~ If the sale is of personal property capable of manual delivery, it must be within view of those who attend the sale and must be sold in ~~such~~ parcels as are likely to bring the highest price, and when the sale is of real property

consisting of several known lots or parcels they must be sold separately unless they constitute one parcel on which improvements have been constructed. The judgment debtor, if present at the sale, may direct the order in which property, ~~real or personal,~~ must be sold; ~~when such~~ if the property consists of several known lots or parcels or of articles which can be sold to advantage separately; ~~and the~~. The sheriff or other officer shall follow ~~such these~~ directions.

**SECTION 7. AMENDMENT.** Section 28-23-09 of the North Dakota Century Code is amended and reenacted as follows:

**28-23-09. Surplus paid judgment debtor.** ~~When~~ Except for real estate foreclosure sales if the property sells for more than the amount required to be collected, the surplus must be paid to the judgment debtor, unless the officer has another execution in the officer's hands on which the surplus rightfully may be applied.

**SECTION 8. AMENDMENT.** Section 28-23-11 of the North Dakota Century Code is amended and reenacted as follows:

**28-23-11. Purchaser's right - Sheriff's certificate.**

1. Upon a sale of real property, the purchaser is substituted for the judgment debtor and acquires all the right, title, interest, and claim of ~~such the~~ debtor to ~~such the~~ property; ~~and when~~. If the estate is less than a leasehold of two years' unexpired term, the sale is absolute. In all other cases the real property is subject to redemption as provided in this title. The officer shall give to the purchaser a certificate of sale containing:
  1. A ~~particular a~~ description of the real property sold;
  2. A a statement of the price bid for each distinct lot or parcel;
  3. A a statement of the whole price paid; ~~and~~
  4. ~~When subject to the period of redemption, a statement to that effect; and the name of each plaintiff and defendant named in the foreclosure action or served in the foreclosure by the advertisement.~~
2. ~~Such certificate must be executed by the~~ The officer shall execute the certificate and ~~acknowledged~~ acknowledge or ~~proved~~ prove the certificate as ~~may be required by law~~ for deeds of real property.

**SECTION 9. AMENDMENT.** Section 28-23-12 of the North Dakota Century Code is amended and reenacted as follows:

**28-23-12. Recording of sheriff's certificate required - Evidence.** The sheriff's certificate of sale must be recorded in the office of the recorder of the county ~~wherein in which~~ the real property is situated; within ~~sixty ten~~ sixty ten days from the date of sale. ~~Such~~ The sheriff's certificate or a certified copy ~~thereof~~ of the certificate certified by ~~such the~~ recorder must be taken and deemed evidence of the facts ~~therein recited and contained~~ in the certificate.

**SECTION 10. AMENDMENT.** Section 28-23-13 of the North Dakota Century Code is amended and reenacted as follows:

**28-23-13. Proceedings upon confirmation.** If the court, upon the return of any execution for the satisfaction of which any real property or interest ~~therein in real property~~ has been sold, after having carefully examined the proceedings of the officer, is satisfied that the sale has been made in all respects in conformity to the provisions of this chapter, the court shall make an order confirming the sale and directing the clerk to make an entry on the journal that the court is satisfied of the legality of ~~such the~~ sale, and an order that the officer make to the purchaser a deed of ~~such the~~ real property, or interest ~~therein, in the real property~~ at the expiration of ~~one year from the day of sale~~ the redemption period unless the ~~same~~ property is redeemed. The officer ~~after making such sale~~ may retain the purchase money in the officer's hands until the court has examined the officer's proceedings as aforesaid confirms the sale, ~~when then~~ the officer shall pay the ~~same~~ money to the person entitled ~~thereto~~ to the money by order of the court.

**SECTION 11. AMENDMENT.** Section 28-23-14 of the North Dakota Century Code is amended and reenacted as follows:

**28-23-14. Reversal does not defeat sale.** If any judgment, in satisfaction of which any real property is sold, is reversed at any time thereafter, ~~such the~~ reversal does not defeat nor affect the title of the purchaser, but in such case, restitution must be made by the judgment creditor of the money for which ~~such real property was sold~~ received from the sale, with legal interest ~~thereon~~ on the money from the day of sale.

Approved April 13, 2007  
Filed April 16, 2007

**CHAPTER 279****SENATE BILL NO. 2222**

(Senator Holmberg)

**PROPERTY REDEMPTION**

AN ACT to amend and reenact sections 28-24-01, 28-24-02, 28-24-03, 28-24-04, 28-24-05, 28-24-06, 28-24-07, 28-24-10, 28-24-13, and 28-24-14 of the North Dakota Century Code, relating to redemption of property.

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

**SECTION 1. AMENDMENT.** Section 28-24-01 of the North Dakota Century Code is amended and reenacted as follows:

**28-24-01. Who may redeem - Redemptioner.** ~~Property~~ A property sold subject to redemption, ~~or any part sold separately,~~ may be redeemed ~~in the manner hereinafter as provided;~~ in this chapter by the following ~~persons~~ person or their successors in interest:

1. The judgment debtor, ~~or the judgment debtor's successors in interest;~~ and or
2. A creditor having a lien ~~by judgment, mortgage, or otherwise~~ on the property ~~sold,~~ or on some ~~share or part thereof of the property,~~ subsequent to that on which the property was sold, and is designated in this chapter as a redemptioner.

~~The persons described in subsection 2 are in this chapter termed redemptioners.~~

**SECTION 2. AMENDMENT.** Section 28-24-02 of the North Dakota Century Code is amended and reenacted as follows:

**28-24-02. Payment on and period of redemption.** The judgment debtor or redemptioner may redeem the property from the purchaser ~~by during the redemption period by~~ paying the ~~purchaser~~ amount of the ~~purchase bid and any additional lien claimed under section 28-24-07~~ 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,~~ 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 prior lien with interest must be paid to effect a redemption. ~~The period of redemption is six months for a redemption under subsection 4 of section 32-19.1-04 and for all other redemptions the period of redemption is one year. The period of redemption begins at the time of the filing of the summons and complaint in the office of the clerk of district court or at the time of the first publication of the notice before foreclosure by advertisement, unless it is determined by the court that the mortgagee is not entitled to judgment. The final date for redemption may not be earlier than sixty days after the sheriff's sale. Except as provided in section 32-19-18 for redemption from foreclosure sales, the redemption period is one year from the date of the sheriff's sale.~~

**SECTION 3. AMENDMENT.** Section 28-24-03 of the North Dakota Century Code is amended and reenacted as follows:

**28-24-03. Redemption by redemptioner - Notice to be recorded.** A redemptioner ~~making redemption~~ shall give a written notice of redemption to the sheriff and at the same time shall record a duplicate in the office of the county recorder of the county where the land is situated. The redemptioner ~~shall~~ must state in the notice of redemption an amount that the redemptioner will credit on the claim ~~against the debtor~~ on making redemption. If the amount stated in the notice is less than the amount of the lien under which the redemptioner makes redemption, a later redemptioner ~~having a subordinate lien~~ may redeem from the earlier redemptioner by paying the amount paid by that redemptioner, ~~together with the amount of any taxes, assessments, utilities, or other items paid by that redemptioner in protection of the title or premises,~~ and interest at the same rate as provided in the original instrument on which the judgment is based, together with the amount stated by the first redemptioner in the notice. The amount stated by a redemptioner in the notice must be treated as a payment of that amount on the indebtedness, and the redemptioner ~~shall~~ immediately shall endorse that on the evidence of the claim. If the claim is a judgment, the redemptioner shall cause a statement of that amount to be entered by the clerk of court in the judgment docket. That credit is ~~deemed~~ conditional ~~only~~ and must be canceled on proof of a further redemption by the debtor or by a redemptioner having a prior right, without payment of the amount credited.

**SECTION 4. AMENDMENT.** Section 28-24-04 of the North Dakota Century Code is amended and reenacted as follows:

**28-24-04. Successive redemptions - Time.** If property is redeemed by a redemptioner, another redemptioner, even after the expiration of ~~one year from the day of sale~~ redemption period, may redeem from the last redemption if the redemption is made within sixty days after ~~such last recording of the notice of redemption.~~ This sixty-day limitation does not apply to any redemption made within ~~one year after the sale by whomsoever or from whomsoever such redemption is made~~ period, but all persons entitled to redeem in all cases must have the entire statutory redemption period of one year from the day of sale in which to redeem. The property, as often as a redemptioner is so disposed, may be redeemed again from any previous redemptioner within sixty days after the recording of the last notice of redemption.

**SECTION 5. AMENDMENT.** Section 28-24-05 of the North Dakota Century Code is amended and reenacted as follows:

**28-24-05. Redemptioner shall produce production of requisite papers.** A redemptioner shall produce to the officer or person from whom the redemptioner seeks to redeem and shall serve with the redemptioner's notice to the sheriff:

1. A copy of the docket of the judgment under which the redemptioner claims the right to redeem, certified by the clerk of the district court of the county where the judgment is docketed, or, if the redemptioner redeems upon a mortgage or other lien, a note of the record ~~thereof~~ of the mortgage or lien certified by the county recorder;
2. A copy of the assignment necessary to establish the redemptioner's claim, verified by the affidavit of the redemptioner or of a subscribing witness ~~thereto~~ to the assignment; and

3. An affidavit by the redemptioner or the redemptioner's agent showing the amount then actually due on the lien.

**SECTION 6. AMENDMENT.** Section 28-24-06 of the North Dakota Century Code is amended and reenacted as follows:

**28-24-06. Redemption by debtor - Recording certificate - Rights of redemption.** The debtor may not be required to pay more to effect a redemption than the purchase price, with interest from the day of sale, at the same rate as provided in the original instrument on which the judgment is based, ~~and all taxes and other items paid under sections 28-24-02 and 28-24-07 with interest on those items from the date of payment, at the same rate as provided in the original instrument on which the judgment is based,~~ despite the fact that the debtor seeks to redeem from a redemptioner. If the debtor redeems, the effect of the sale is terminated and the debtor is restored to the estate. On a redemption by the debtor, the person to whom the payment is made shall execute and deliver to the debtor a certificate of redemption acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property. The certificate must be recorded in the office of the county recorder of the county in which the property is situated and the county recorder shall note that record in the margin of the record of the certificate of sale. If the debtor redeems from a redemptioner who, to effect redemption, has paid liens on the property other than for taxes or assessments, the redemptioner is subrogated to all the rights of the former holders of those liens, and the recording of written notice of that redemption is notice of the rights of that redemptioner in and to all the liens the redemptioner holds as equitable assignee as fully as if formal written assignments had been recorded.

**SECTION 7. AMENDMENT.** Section 28-24-07 of the North Dakota Century Code is amended and reenacted as follows:

**28-24-07. Protection of premises purchaser during period of redemption.** If a sale of real estate is made under execution or upon mortgage foreclosure, the purchaser at the sale or the purchaser's ~~successors~~ successor in interest, in case of the expiration during the period of redemption of any insurance policy on the premises sold, may pay the premium necessary to procure a renewal of that policy, and, if any taxes or assessments become delinquent, or if any installment of interest or principal on any prior or superior mortgage becomes due during that period of redemption, and any utilities or other items to be paid by the purchaser in protection of the title or premises, the purchaser may pay those charges. The amount ~~so~~ paid, with interest at the same rate as provided in the original instrument on which the judgment is based, is part of the sum necessary to be paid for the redemption from the sale. The payments ~~may~~ must be proved by a written notice of additional lien verified by affidavit of the purchaser, ~~or~~ the purchaser's agent or attorney, stating the items and describing the premises. That notice ~~may~~ must be recorded in the office of the county recorder and a copy of the notice served on the sheriff of the county. After that service the sheriff, ~~before permitting a redemption,~~ shall collect the full amount specified in the notice in addition to the amount which would otherwise be due in redemption from the sale, and shall pay over that amount to the purchaser at the sale, or the purchaser's assignee. If the notice is not served on the sheriff and recorded within five days after payment, redemption may be made without paying those amounts.

**SECTION 8. AMENDMENT.** Section 28-24-10 of the North Dakota Century Code is amended and reenacted as follows:

**28-24-10. Notice of additional lien.** If any taxes, assessments, insurance premiums, utility charges, or other items are paid by the purchaser or by a redemptioner, or if the purchaser or redemptioner has or ~~acquires~~ acquired any lien other than that on which the sale or redemption was made, written notice of that item must be given to the sheriff and if that notice is not given to the sheriff, the property may be redeemed without paying ~~that tax, assessment,~~ the amount shown in the notice of additional lien, utility, or other item.

**SECTION 9. AMENDMENT.** Section 28-24-13 of the North Dakota Century Code is amended and reenacted as follows:

**28-24-13. Sheriff shall execute deed.** If the property is not redeemed according to law, ~~the purchaser or the purchaser's assignee or the redemptioner, as the case may be, is entitled to a sheriff's deed of the property,~~ and the sheriff shall execute and deliver such a sheriff's deed for the property immediately after the time for redemption ~~in each case~~ has expired to the purchaser, purchaser's assignee, or the redemptioner.

**SECTION 10. AMENDMENT.** Section 28-24-14 of the North Dakota Century Code is amended and reenacted as follows:

**28-24-14. Effect of sheriff's deed - Contents.** The sheriff's deed is sufficient evidence of the legality of the sale and the proceedings ~~therein contained in the certificate,~~ until the contrary is proved, and vests in the grantee as good and perfect a title in ~~to~~ the premises ~~therein mentioned and described as was vested in the debtor at or after the time when such the real property became liable to the satisfaction of the judgment. Such The deed must recite the execution or executions, or the substance thereof of the execution, and the names of the parties, the amount and date of rendition of the judgment by virtue whereof which the said real property was sold, and must be executed, acknowledged, or proved and recorded as may be provided by law to perfect the a conveyance of real property in other cases.~~

Approved April 12, 2007  
Filed April 13, 2007



## CHAPTER 280

### HOUSE BILL NO. 1501

(Representatives Brandenburg, Headland, Pollert)  
(Senators Erbele, Olafson, Wanzek)

## FEEDLOT AND FACILITY PERMIT APPEALS

AN ACT to create and enact a new subsection to section 28-32-50 and a new section to chapter 61-28 of the North Dakota Century Code, relating to appeals regarding permits for livestock feedlots and other permitted facilities.

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

**SECTION 1.** A new subsection to section 28-32-50 of the North Dakota Century Code is created and enacted as follows:

In any civil judicial proceeding involving adverse parties to an appeal or enforcement action involving an environmental permit issued under chapters 23-20.3, 23-25, 23-29, or 61-28 in which two or more of the adverse parties are not an administrative agency or an agent of an administrative agency, the court may award the prevailing nonagency party reasonable attorney's fees and costs if the court finds in favor of that party and determines that the nonprevailing nonagency party acted without substantial justification, or on the basis of claims or allegations that are factually unsupported. The court shall award reasonable attorney's fees and costs if the court determines that the nonprevailing nonagency party's claims or allegations are frivolous as provided in section 28-26-01. If the appeal or civil judicial proceeding covered by this subsection involves multiple claims or allegations, the court may apportion attorney's fees and costs in proportion to the time reasonably spent by a prevailing party relating to claims pursued by the nonprevailing party that were frivolous, factually unsupported, or without substantial justification.

**SECTION 2.** A new section to chapter 61-28 of the North Dakota Century Code is created and enacted as follows:

**Appeal from permit proceedings.** An appeal from the issuance, denial, modification, or revocation of a permit issued under chapter 23-20.3, 23-25, 23-29, or 61-28 may be made by the person who filed the permit application, or by any person who is aggrieved by the permit application decision, provided that person participated in or provided comments during the hearing process for the permit application, modification, or revocation. An appeal must be taken within thirty days after the final permit application determination is mailed by first-class mail to the permit applicant and to any interested person who has requested a copy of the final permit determination during the permit hearing process. Except as provided in this section, an appeal of the final permit determination is governed by sections 28-32-40, 28-32-42, 28-32-43, 28-32-44, 28-32-46, and 28-32-49. The department may substitute final permit conditions and written responses to public comments for findings of fact and conclusions of law. Except for a violation of chapter 23-20.3, 23-25, 23-29, or 61-28 which occurs after the permit is issued, or any permit condition, rule, order, limitation, or other applicable requirement implementing those chapters which occurs after the permit is issued, any challenge to the department's

issuance, modification, or revocation of the permit or permit conditions must be made in the permit hearing process and may not be raised in any collateral or subsequent legal proceeding, and the applicant and any aggrieved person may raise on appeal only issues that were raised to the department in the permit hearing process.

Approved April 12, 2007  
Filed April 13, 2007

# JUDICIAL PROCEDURE, CRIMINAL

## CHAPTER 281

### SENATE BILL NO. 2378

(Senators Olafson, Fiebiger, Lyson, Nething)  
(Representatives Berg, DeKrey)

### FEDERAL AGENT AUTHORITY TO ARREST

AN ACT to amend and reenact section 29-06-05.2 of the North Dakota Century Code, relating to the authority of a federal law enforcement agent to make an arrest for a violation of state law.

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

**SECTION 1. AMENDMENT.** Section 29-06-05.2 of the North Dakota Century Code is amended and reenacted as follows:

**29-06-05.2. Federal ~~bureau of investigation~~ law enforcement officer - Authority to make arrests.**

1. "~~Special~~ Federal agent" means an employee of the federal bureau of investigation ~~or the federal drug enforcement administration~~ who is authorized to arrest, with or without a warrant, any individual for a violation of the United States Code and carry a firearm in the performance of the employee's duties as a federal law enforcement officer.
2. A ~~special~~ federal agent has the same authority and immunity as a peace officer in this state when making an arrest for a nonfederal crime if any of the following exist:
  - a. The ~~special~~ federal agent has reasonable grounds to believe that a felony offense was committed and the ~~person~~ individual arrested committed the offense.
  - b. The ~~special~~ federal agent is rendering assistance to a peace officer in an emergency or at the request of the peace officer.
  - c. The ~~special~~ federal agent is working as a part of a task force composed of North Dakota peace officers and federal law enforcement officers.

Approved May 2, 2007  
Filed May 3, 2007

**CHAPTER 282****SENATE BILL NO. 2243**  
(Senators Nething, Erbele, Heckaman)  
(Representatives Carlisle, Pollert)**COMMUNITY SERVICE SUPERVISION FEES AND  
FUNDING**

AN ACT to amend and reenact section 29-26-22 of the North Dakota Century Code, relating to community service supervision fees; and to provide an appropriation to the department of corrections and rehabilitation to provide funding for community service supervision grants.

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

**SECTION 1. AMENDMENT.** Section 29-26-22 of the North Dakota Century Code is amended and reenacted as follows:

**29-26-22. Judgment for fines and court - Court administration fee - Community service supervision fee - Special fund funds - Docketing and enforcement.**

1. In all criminal cases except infractions, upon a plea or finding of guilt, the court shall impose a court administration fee in lieu of the assessment of court costs. The court administration fee must include a fee of one hundred twenty-five dollars for a class B misdemeanor, two hundred dollars for a class A misdemeanor, four hundred dollars for a class C felony, six hundred fifty dollars for a class B felony, and nine hundred dollars for a class A or AA felony.
2. In addition, in all criminal cases except infractions, the court administration fee must include one hundred dollars. Of the additional one hundred dollar court administration fee, the first seven hundred fifty thousand dollars collected per biennium must be deposited in the indigent defense administration fund, which must be used to contract for indigent defense services in this state, and the next four hundred sixty thousand dollars collected per biennium must be deposited in the court facilities improvement and maintenance fund. After the minimum thresholds have been collected, one-half of the additional court administration fee must be deposited in each fund.
3. In addition to any court administration fees that may be imposed under subsections 1 and 2, the court shall impose upon each defendant who receives a sentence that includes community service a community service supervision fee of fifty dollars. The community service supervision fee must be deposited in the community service supervision fund. The fees deposited in this fund must be used to provide community service supervision grants subject to legislative appropriations.
4. A court may waive the administration fee or community service supervision fee upon a showing of indigency as provided in section

25-03.1-13. District court administration fees, exclusive of amounts deposited in the indigent defense administration fund and the court facilities and improvement fund, and forfeitures must be deposited in the state general fund. A judgment that the defendant pay a fine or ~~court administration fee~~ administration fee fees, or both, may be docketed and if docketed constitutes a lien upon the real estate of the defendant in like manner as a judgment for money rendered in a civil action. The court may allow the defendant to pay any assessed administration fee or community service supervision fee in installments. When a defendant is assessed administration fees or a community service supervision fee, the court may not impose at the same time an alternative sentence to be served if the fees are not paid.

**SECTION 2. COMMUNITY SERVICE SUPERVISION PROGRAM.** In addition to the funds appropriated in section 3 of this Act, the department of corrections and rehabilitation shall use \$100,000 of the funds appropriated in the field services line item in section 3 of House Bill No. 1015, as approved by the sixtieth legislative assembly, for the purpose of providing matching grants for community service supervision of offenders, for the biennium beginning July 1, 2007, and ending June 30, 2009. The funds made available under this Act of \$225,000 must be granted on a per case basis and require a local program match of one dollar for each two dollars provided by the department. The department may not use these funds for any other purpose.

**SECTION 3. APPROPRIATION.** There is appropriated out of any moneys in the community service supervision fund in the state treasury, not otherwise appropriated, the sum of \$125,000, or so much of the sum as may be necessary, to the department of corrections and rehabilitation for the purpose of providing matching grants for community service supervision of offenders, for the biennium beginning July 1, 2007, and ending June 30, 2009.

Approved April 26, 2007  
Filed April 27, 2007

# UNIFORM PROBATE CODE

## CHAPTER 283

### HOUSE BILL NO. 1408

(Representatives Dahl, R. Kelsch, Kretschmar, S. Meyer)  
(Senators Flakoll, Heitkamp)

## HOMICIDE EFFECT ON JOINT TENANCY

AN ACT to amend and reenact subsections 3 and 4 of section 30.1-10-03 of the North Dakota Century Code, relating to the effect of a homicide on probated property.

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

**SECTION 1. AMENDMENT.** Subsections 3 and 4 of section 30.1-10-03 of the North Dakota Century Code are amended and reenacted as follows:

3. The intentional and felonious killing of the decedent:
  - a. Revokes any revocable disposition or appointment of property made by the decedent to the killer in a governing instrument, provision in a governing instrument conferring a general or nongeneral power of appointment on the killer, and nomination of the killer in a governing instrument, nominating or appointing the killer to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, or agent.
  - b. ~~Severs~~  voids the interests of the ~~decedent and~~ killer in property held ~~by them with the decedent~~ at the time of the killing as joint tenants with the right of survivorship; ~~transforming the interests of the decedent and killer into equal tenancies in common.~~
4. The ~~severance voided interest~~ under subdivision b of subsection 3 does not affect any third-party interest in property acquired for value and in good-faith reliance on an apparent title by survivorship in the killer unless a writing declaring the ~~severance voided interest~~ has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property that are relied upon, in the ordinary course of transactions involving ~~such~~  the property, as evidence of ownership.

Approved March 9, 2007  
Filed March 12, 2007

# JUDICIAL PROOF

## CHAPTER 284

### HOUSE BILL NO. 1333

(Representatives Klemin, Delmore, Dosch)  
(Senators Erbele, Nelson, Nething)

## EXPRESSIONS OF EMPATHY INADMISSIBLE

AN ACT to provide that expressions of empathy by health care providers are inadmissible in civil actions; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

### SECTION 1. Expressions of empathy.

1. A statement, affirmation, gesture, or conduct of a health care provider, or health care provider's employee or agent, that expresses apology, sympathy, commiseration, condolence, compassion, or benevolence to a patient or to a patient's relative or representative is not admissible as evidence of liability or as an admission against interest in a civil action, arbitration proceeding, or administrative hearing regarding the health care provider.
2. For purposes of this section, unless the context otherwise requires:
  - a. "Health care provider" means:
    - (1) An individual licensed or certified by the state to deliver health care;
    - (2) A hospital or clinic, including an ambulatory surgery center or group of physicians operating a clinic or outpatient care facility, or a professional corporation or other professional entity comprised of such health care providers as permitted by the laws of this state; and
    - (3) A nursing, basic, or assisted living facility licensed by this state or by any other health care organization.
  - b. "Relative" means an individual who has a relationship to the patient by marriage, blood, or adoption.
  - c. "Representative" means a legal guardian, attorney, person designated to make decisions on behalf of a patient under a health care directive, or any person recognized in law or custom as a patient's agent.

**SECTION 2. APPLICATION.** This Act applies to actions or other proceedings commenced on or after the effective date of this Act.

Approved March 2, 2007  
Filed March 2, 2007



**CHAPTER 285****HOUSE BILL NO. 1197**

(Representatives Klemin, Carlisle, Monson)

(Senators Dever, Kilzer, Lyson)

**DNA COLLECTION AND TESTING**

AN ACT to amend and reenact sections 31-13-03 and 31-13-07 of the North Dakota Century Code, relating to collection and testing of DNA samples for law enforcement identification purposes; and to provide an effective date.

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

<sup>151</sup> **SECTION 1. AMENDMENT.** Section 31-13-03 of the North Dakota Century Code is amended and reenacted as follows:

**31-13-03. Persons to be tested - Costs.**

1. A person eighteen years of age or over who is arrested for the commission of a felony shall provide correctional personnel upon booking a sample of blood or other body fluids for DNA law enforcement identification purposes and inclusion in the law enforcement identification data bases. If it is determined that the person's DNA sample is included in the law enforcement identification data bases, an additional sample is not required.
  
2. The provisions of this subsection apply only if a person's DNA sample is not already included in the law enforcement identification data bases. The court shall order any person convicted on or after August 1, 1995, of any sexual offense or attempted sexual offense in violation of sections 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, subdivision e or f of subsection 1 of section 12.1-20-07, or section 12.1-20-11 or any other offense when the court finds at sentencing that the person engaged in a nonconsensual sexual act or sexual contact with another person during, in the course of, or as a result of, the offense or any person who is in the custody of the department after July 31, 1995, as a result of a conviction of one of these offenses to have a sample of blood or other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in law enforcement identification data bases. The court shall order any person convicted after July 31, 2001, of a felony offense contained in chapter 12.1-16, 12.1-17, or 12.1-18, section 12.1-22-01, or chapter 12.1-27.2 or any person who is in the custody of the department after July 31, 2001, as a result of a conviction for one of these offenses to have a sample of blood or other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in the law enforcement identification data bases. The court shall order an

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<sup>151</sup> Section 31-13-03 was also amended by section 1 of House Bill No. 1355, chapter 286.

individual convicted after July 31, 2005, of any felony offense or an individual arrested for the commission of a felony offense after July 31, 2009, to have a sample of blood or other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in the law enforcement identification data bases. DNA samples must be collected immediately, but may be preserved by the department for subsequent analysis upon receipt of sufficient funding. Notwithstanding any other provision of law, if the sentencing court has not previously ordered a sample of blood or other body fluids to be taken, the court retains jurisdiction and authority to enter an order that the convicted person provide a sample of blood or other body fluids as required by this section. Any person convicted after July 31, 1995, who is not sentenced to a term of confinement shall provide a sample of blood or other body fluids as a condition of the sentence or probation at a time and place specified by the sentencing court. ~~The~~

3. If the person from whom a DNA sample is collected is convicted of a felony offense, the sentencing court shall assess the cost of the procedure against the person being tested. The department shall collect the cost of the procedure from the person being tested and transfer the amount collected to the attorney general for deposit in the general fund.

<sup>152</sup> **SECTION 2. AMENDMENT.** Section 31-13-07 of the North Dakota Century Code is amended and reenacted as follows:

**31-13-07. Removal of DNA profiles from data base.** A person whose DNA profile has been included in the data base pursuant to this chapter may petition the district court for expungement on the grounds that the arrest that led to the inclusion of the DNA profile has not resulted in a felony charge within one year; has been resolved by a dismissal, acquittal, or misdemeanor conviction; has not resulted in a felony conviction; or the conviction on which the authority for including the DNA profile was based has been reversed or the case dismissed. The laboratory shall expunge all identifiable information in the data base pertaining to the person and destroy all samples from the person upon receipt of a certified order. The detention, arrest, or conviction of a person based upon data base information is not invalidated if it is later determined that the specimens or samples were obtained or placed in the data base by mistake.

**SECTION 3. EFFECTIVE DATE.** This Act becomes effective on August 1, 2009.

Approved April 23, 2007  
Filed April 27, 2007

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<sup>152</sup> Section 31-13-07 was also amended by section 3 of House Bill No. 1224, chapter 211.

## CHAPTER 286

### HOUSE BILL NO. 1355

(Representatives Klemin, Carlisle, Monson)  
(Senators Dever, Kilzer, Lyson)

## DNA TESTING UPON CONVICTION

AN ACT to amend and reenact section 31-13-03 of the North Dakota Century Code, relating to persons subject to DNA testing.

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

<sup>153</sup> **SECTION 1. AMENDMENT.** Section 31-13-03 of the North Dakota Century Code is amended and reenacted as follows:

**31-13-03. Persons to be tested - Costs.** The court shall order any person convicted on or after August 1, 1995, of any sexual offense or attempted sexual offense in violation of sections 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, subdivision e or f of subsection 1 of section 12.1-20-07, or section 12.1-20-11 or any other offense when the court finds at sentencing that the person engaged in a nonconsensual sexual act or sexual contact with another person during, in the course of, or as a result of, the offense or any person who is in the custody of the department after July 31, 1995, as a result of a conviction of one of these offenses to have a sample of blood or other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in law enforcement identification data bases. The court shall order any person convicted after July 31, 2001, of a felony offense contained in chapter 12.1-16, 12.1-17, or 12.1-18, section 12.1-22-01, or chapter 12.1-27.2 or any person who is in the custody of the department after July 31, 2001, as a result of a conviction for one of these offenses to have a sample of blood or other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in the law enforcement identification data bases. The court shall order an individual convicted after July 31, 2005, of any felony offense to have a sample of blood or other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in the law enforcement identification data bases. DNA samples must be collected immediately, but may be preserved by the department for subsequent analysis upon receipt of sufficient funding. Notwithstanding any other provision of law, if the sentencing court has not previously ordered a sample of blood or other body fluids to be taken, the court retains jurisdiction and authority to enter an order that the convicted person provide a sample of blood or other body fluids as required by this section. Any person convicted after July 31, 1995, who is not sentenced to a term of confinement shall provide a sample of blood or other body fluids as a condition of the sentence or probation at a time and place specified by the sentencing court. The sentencing court shall assess the cost of the procedure against the person being tested. The department shall collect the cost of the procedure from the person being tested and transfer the amount collected to the attorney general for deposit in the general fund. For purposes of this section,

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<sup>153</sup> Section 31-13-03 was also amended by section 1 of House Bill No. 1197, chapter 285.

"conviction" and "convicted" means a plea of guilty or a finding of guilt by a court or a jury of one of the above-mentioned crimes, notwithstanding that the court suspended execution of sentence or deferred imposition of sentence in accordance with subsection 3 or 4 of section 12.1-32-02, or a felony offense was reduced to a misdemeanor offense in accordance with subsection 9 of section 12.1-32-02 or section 12.1-32-07.1.

Approved March 23, 2007  
Filed March 23, 2007

# JUDICIAL REMEDIES

## CHAPTER 287

### HOUSE BILL NO. 1108

(Representative Porter)

### CIVIL LIABILITY IMMUNITY

AN ACT to amend and reenact subsection 3 of section 32-03.1-02.3 of the North Dakota Century Code, relating to immunity from civil liability for persons using automated external defibrillators.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 32-03.1-02.3 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~If the requirements of subsection 4 are met, the~~ The immunity provision of subsection 2 applies to a licensed physician under subdivision d of subsection 1, the person who provides the training under subdivision a of subsection 1, and the person responsible for the site on which the automated external defibrillator is located.

Approved March 6, 2007

Filed March 7, 2007

**CHAPTER 288****HOUSE BILL NO. 1452**

(Representatives Conrad, Klemin, L. Meier, Schneider)  
(Senator Wardner)

**CHARITABLE ORGANIZATION CIVIL LIABILITY  
LIMITATIONS**

AN ACT to provide for limitations on the civil liability of a charitable organization.

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

**SECTION 1. Definitions.** As used in this Act, unless the context otherwise requires:

1. "Charitable organization" means a nonprofit organization whose primary purpose is for relief of poor, disabled, underprivileged, or abused persons, support of youth and youth programs, or the prevention of abuse to children and vulnerable adults.
2. "Claim" means any claim for money damages brought against a charitable organization or an employee of the charitable organization for an injury caused by the charitable organization or an employee of the charitable organization acting within the scope of the employee's employment.
3. "Employee" means every present or former officer or employee of the charitable organization or any person acting on behalf of the charitable organization in an official capacity, temporarily or permanently, with or without compensation.
4. "Injury" means personal injury, death, or property damage.
5. "Occurrence" means an accident, including continuous or repeated exposure to a condition, which results in an injury.
6. "Personal injury" includes bodily injury, mental injury, sickness, or disease sustained by a person and injury to a person's rights or reputation.
7. "Property damage" includes injury to or destruction of tangible or intangible property.
8. "Scope of employment" means the employee was acting on behalf of the charitable organization in the performance of duties or tasks of the charitable organization assigned to the employee by the charitable organization.

**SECTION 2. Liability of charitable organizations - Limitations - Statute of limitations.**

1. A charitable organization may be only held liable for money damages for a personal injury or property damage proximately caused by the negligence or wrongful act or omission of an employee acting within the employee's scope of employment.
2. The liability of the charitable organization under this Act is limited to a total of two hundred fifty thousand dollars per person and one million dollars for any number of claims arising from any single occurrence. The charitable organization may not be held liable, or be ordered to indemnify an employee held liable, for punitive or exemplary damages.
3. An action brought under this Act must be commenced within the period provided in chapter 28-01.

Approved March 23, 2007  
Filed March 23, 2007

## CHAPTER 289

### HOUSE BILL NO. 1211

(Representative DeKrey)

### GARNISHMENT

AN ACT to amend and reenact sections 32-09.1-03, 32-09.1-04, 32-09.1-07, and 32-09.1-09 of the North Dakota Century Code, relating to the garnishment of wages.

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

**SECTION 1. AMENDMENT.** Section 32-09.1-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **32-09.1-03. Restriction on garnishment of earnings.**

1. The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment may not exceed the lesser of:
  - a. Twenty-five percent of disposable earnings for that week.
  - b. The amount by which disposable earnings for that week exceed forty times the federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended [Pub. L. 95-151; 91 Stat. 1245; 29 U.S.C. 206] or any equivalent multiple thereof prescribed by regulation by the secretary of labor in case of earnings for any pay period other than a week, in effect at the time the earnings are payable.
2. The maximum amount subject to garnishment under subsection 1 for any workweek must be reduced by twenty dollars for each dependent family member residing with the garnishment debtor. Within ten days after receipt of the garnishment summons, the garnishment debtor shall provide to the employer a verified list, signed under penalty of perjury by the garnishment debtor, of the names and social security numbers, if any, of the dependents who reside with the garnishment debtor. If the garnishment debtor fails to provide the list, it is ~~conclusively~~ presumed that the garnishment debtor claims no dependents, but the garnishment debtor may provide the list at a later date, in which case the exemptions claimed will be in effect for amounts subject to garnishment after the date the list is provided.
3. The restrictions of subsection 1 do not apply in the case of:
  - a. Any order of any court for the support of any person.
  - b. Any order of any court of bankruptcy under chapter XIII of the Bankruptcy Act.
  - c. Any debt due for any state or federal tax.



4. The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person may not exceed:
  - a. Where such individual is supporting a spouse or dependent child other than a spouse or child with respect to whose support such order is used, fifty percent of the individual's disposable earnings for that week; and
  - b. Where such individual is not supporting a spouse or dependent child other than a spouse or child with respect to whose support such order is used, sixty percent of the individual's disposable earnings for that week;

except that, with respect to the disposable earnings of any individual for any workweek, the fifty percent specified in subdivision a must be deemed to be fifty-five percent and the sixty percent specified in subdivision b must be deemed to be sixty-five percent, if and to the extent that the earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

5. No court of this state may make, execute, or enforce any order or process in violation of this section.

**SECTION 2. AMENDMENT.** Section 32-09.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**32-09.1-04. Notice before garnishment of earnings - Notice of renewal of garnishment of earnings.**

1. At least ten days before the issuance of any garnishee summons against the earnings of any person, the creditor shall serve upon the debtor a notice that a garnishee summons may be issued. The notice must be served personally or by first-class mail. Failure to serve the notice renders any subsequent garnishment void. The notice must be in substantially the following form:

To: \_\_\_\_\_ Date: \_\_\_\_\_

~~Judgment~~ Debtor

Please take notice that a garnishee summons that will require part of your wages to be withheld may be served upon your employer, without any further court proceedings or notice to you, at any time after ten days following the date of this notice. For each dependent family member residing with you, the amount subject to garnishment for any workweek may be reduced by twenty dollars, if within ten days after receipt of the garnishee summons you provide to your employer a verified list signed by you, under penalty of perjury, of the dependent family members residing with you and their social security numbers, if any. If you provide the list of dependents after the ten-day period, the exemptions you claim will apply only to the amounts subject to garnishment after the date you provide the list. You may

wish to contact the undersigned judgment creditor or attorney to arrange for the settlement of the debt, which is \$\_\_\_\_\_.

\_\_\_\_\_  
 Judgment Creditor  
 Address

2. As an alternative to subsection 1, if a creditor renews an expiring continuing lien on wages under section 32-09.1-21, at least ten days but no more than twenty days before the expiration of the continuing lien on wages, the creditor may serve upon the debtor a notice that a garnishee summons may be reissued for a continuing lien on wages under section 32-09.1-21. The notice must be served personally or by first-class mail. Failure to serve the notice renders any subsequent garnishment void. The notice must be in substantially the following form:

To: \_\_\_\_\_ Date: \_\_\_\_\_

Judgment Debtor

Please take notice that a garnishee summons that will require part of your wages to be withheld may be served upon your employer without any further court proceedings or notice to you. This action is a renewal of the current garnishment order for this case. For each dependent family member residing with you, the amount subject to garnishment for any workweek may be reduced by twenty dollars, if within ten days after receipt of the garnishee summons you provide to your employer a verified list signed by you, under penalty of perjury, of the dependent family members residing with you and their social security numbers, if any. If you provide the list of dependents after the ten-day period, the exemptions you claim will apply only to the amounts subject to garnishment after the date you provide the list. You may wish to contact the undersigned judgment creditor or attorney to arrange for the settlement of the debt, which is \$\_\_\_\_\_.

\_\_\_\_\_  
 Judgment Creditor  
 Address

3. In addition to the notice required under subsection 1 or 2, the creditor shall serve a garnishment debtor's list in substantially the following form under the caption of the case:

To: Garnishee

I, under penalty of perjury, \_\_\_\_\_ (garnishment debtor) certify and affirm that the following persons are my dependents and they reside in my household and I claim the garnishment exemptions as provided by NDCC 32-09.1-03(2):

<u>Name</u>	<u>Social Security Number</u>
_____	_____
_____	_____
_____	_____

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Garnishment Debtor

<sup>154</sup> **SECTION 3. AMENDMENT.** Section 32-09.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**32-09.1-07. Form of summons and notice.** The garnishee summons must state that the garnishee shall serve upon the plaintiff or the plaintiff's attorney within twenty days after service of the garnishee summons a written disclosure, under oath, of indebtedness to the defendant and answers to all written interrogatories that are served with the garnishee summons. The plaintiff may not require disclosure of indebtedness or property of the defendant in the garnishee's possession or under the garnishee's control to the extent that the indebtedness or property exceeds one hundred ten percent of the amount of the judgment which remains unpaid. The garnishee summons must include the full name of the defendant and place of residence and the amount of the judgment which remains unpaid. The garnishee summons must also state that the garnishee shall retain property or money in the garnishee's possession pursuant to this chapter until the plaintiff causes a writ of execution to be served upon the garnishee or until the defendant authorizes release to the plaintiff and must state that after the expiration of the period of time specified in section 32-09.1-20, the garnishee shall release all retained property and money to the defendant and is discharged and relieved of all liability on the garnishee summons. The garnishee summons must state that no employer may discharge any employee because the employee's earnings are subject to garnishment. The garnishee summons must state that any assignment of wages made by the defendant or indebtedness to the garnishee incurred within ten days before the receipt of notice of the first garnishment on the underlying debt is void. The garnishee summons must state the date of the entry of judgment against the defendant. The garnishee summons must state that the defendant shall provide to the garnishee within ten days after receipt of the garnishee summons a ~~verified~~ list of the dependent family members who reside with the defendant and their social security numbers, if any, to have the maximum amount subject to garnishment reduced under subsection 2 of section 32-09.1-03. The garnishee summons must state that failure of the defendant to provide a ~~verified~~ list to the garnishee within ten days after receipt of the garnishee summons is conclusive with respect to whether the defendant claims no family members.

<sup>154</sup> Section 32-09.1-07 was also amended by section 1 of Senate Bill No. 2274, chapter 290.

The garnishee summons and notice to defendant must be substantially in the following form:

State of North Dakota	)	In _____ Court
	) ss.	
County of _____	)	_____
<hr/>		
	Plaintiff	
against		Garnishee Summons and Notice to Defendant
<hr/>		
	Defendant	
and		
<hr/>		
	Garnishee	

The State of North Dakota to the above-named Garnishee:

You shall serve upon the plaintiff or the plaintiff's attorney, within twenty days after service of this summons upon you, a written disclosure, under oath, setting forth the amount of any debt you may owe to the defendant, \_\_\_\_\_ (give full name and residence of defendant) and a description of any property, money, or effects owned by the defendant which are in your possession. Your disclosure need not exceed \$\_\_\_\_\_. (Enter 110 percent of the plaintiff's judgment which remains unpaid.) The date of entry of the judgment against the defendant was \_\_\_\_\_ (enter date of entry of plaintiff's judgment) and the amount of the judgment that remains unpaid is \$\_\_\_\_\_.

The defendant shall provide you with a ~~verified~~ list of the names of dependent family members who reside with the defendant and their social security numbers if the defendant desires to have the garnishment amount reduced under subsection 2 of section 32-09.1-03. Failure of the defendant to provide the list to you is conclusive to establish that the defendant claims no dependent family members reside with the defendant.

Failure to disclose and withhold may make you liable to the plaintiff for the sum of \$\_\_\_\_\_. (Enter the lesser of the plaintiff's judgment against the defendant or 110 percent of the amount that remains unpaid.)

You shall retain the defendant's nonexempt property, money, and effects in your possession until a writ of execution is served upon you, until the defendant authorizes release to the plaintiff, or until the expiration of 360 days from the date of service of this summons upon you. If no writ of execution has been served upon you or no agreement has been made for payment within 360 days, the garnishment ends and any property or funds held by you must be returned to the defendant if the defendant is otherwise entitled to their possession.

Any assignment of wages by the defendant or indebtedness to you incurred by the defendant within ten days before the receipt of the first garnishment on a debt is void and should be disregarded.

You may not discharge the defendant because the defendant's earnings are subject to garnishment.

Dated \_\_\_\_\_, \_\_\_\_.

By: \_\_\_\_\_

NOTICE TO DEFENDANT

To: \_\_\_\_\_

The garnishee summons, garnishment disclosure form, and written interrogatories (strike out if not applicable), that are served upon you, were also served upon \_\_\_\_\_, the garnishee.

\_\_\_\_\_  
(Attorneys for Plaintiff)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone)

<sup>155</sup> **SECTION 4. AMENDMENT.** Section 32-09.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**32-09.1-09. Disclosure.** Within the time as limited, the garnishee shall serve upon the plaintiff or the plaintiff's attorney written answers, under oath, to the questions in the garnishment disclosure form and to any written interrogatories that are served upon the garnishee. The amount of the garnishee's disclosure need not exceed one hundred ten percent of the amount of the plaintiff's judgment which remains unpaid, after subtracting the total of setoffs, defenses, exemptions, ownerships, or other interests. The written answers may be served personally or by mail. If disclosure is by a corporation or limited liability company, it must be verified by some officer, manager, 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.

<sup>155</sup> Section 32-09.1-09 was also amended by section 2 of Senate Bill No. 2274, chapter 290.

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     ) ) ss. County of _____     )	In _____ Court _____
Plaintiff	
vs. _____ Defendant	
and _____ Garnishee	Garnishment Disclosure

I am the \_\_\_\_\_ of the garnishee and duly authorized to disclose for the garnishee.

On \_\_\_\_\_, \_\_\_\_\_, the 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 under a pension or retirement program. "Earnings" does not include social security benefits or veterans' disability pension benefits, except when the benefits are subject to garnishment to enforce any order for the support of a dependent child. "Earnings" includes military retirement pay. "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld. If the garnishee summons was served upon you at a time when earnings from a prior completed pay period were owing but not paid, complete the following disclosure for earnings from both the past pay period and the current pay period.
2. Adverse interest and setoff. Any setoff, defense, lien, or claim by the garnishee or other persons by reason of ownership or interest in the defendant's property. You must state the name and address and the nature of that person's claim if known. (Any assignment of wages made by the defendant or any indebtedness to a garnishee within ten days before the receipt of the first garnishment on a debt is void and should be disregarded.)

3. Dependent. Any family member of the defendant who is residing in the defendant's residence. (If properly claimed ~~within ten days~~ after receipt of the garnishee summons.)

4. Worksheet:

- a. Total earnings in pay period \_\_\_\_\_
- b. Federal tax \_\_\_\_\_
- c. State tax \_\_\_\_\_
- d. FICA (social security/medicare) \_\_\_\_\_
- e. Total deductions (lines b+c+d) \_\_\_\_\_
- f. Disposable earnings (line a less line e) \_\_\_\_\_
- g. Twenty-five percent of line f \_\_\_\_\_
- h. Minimum wage exemption  
(minimum wage times forty hours times  
number of weeks in pay period) \_\_\_\_\_
- i. Line f less line h \_\_\_\_\_
- j. Line g or line i (whichever is less) \_\_\_\_\_
- k. Dependent exemption (twenty dollars  
per dependent per week, if claimed) \_\_\_\_\_
- l. Adverse interest or setoff \_\_\_\_\_
- m. Total of lines k and l \_\_\_\_\_
- n. Line j less line m \_\_\_\_\_

Line n is the amount subject to garnishment (not to exceed 110 percent of the amount of the judgment which remains unpaid).

Signature \_\_\_\_\_  
Garnishee or Authorized Representative  
of Garnishee

\_\_\_\_\_  
Title

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

Approved March 6, 2007  
Filed March 7, 2007

**CHAPTER 290****SENATE BILL NO. 2274**

(Senators Wardner, Lyson)  
(Representatives Dosch, Kretschmar, Porter)

**GARNISHMENT PROCEEDINGS**

AN ACT to amend and reenact sections 32-09.1-07, 32-09.1-09, 32-09.1-14, and 32-09.1-15 of the North Dakota Century Code, relating to garnishment proceedings.

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

<sup>156</sup> **SECTION 1. AMENDMENT.** Section 32-09.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**32-09.1-07. Form of summons and notice.**

1. The garnishee summons must state ~~that~~:

a. ~~That~~ the garnishee shall serve upon the plaintiff or the plaintiff's attorney within twenty days after service of the garnishee summons ~~a:~~

(1) ~~A~~ written disclosure, under oath, of indebtedness to the defendant; ~~and answers~~

(2) ~~Answers, under oath, to all written interrogatories that are served with the garnishee summons. The plaintiff may not require disclosure of indebtedness or property of the defendant in the garnishee's possession or under the garnishee's control to the extent that the indebtedness or property exceeds one hundred ten percent of the amount of the judgment which remains unpaid.~~

b. ~~The garnishee summons must include the full name of the defendant and, the defendant's place of residence, the date of the entry of judgment against the defendant, the total amount of the judgment which remains unpaid, and the retention amount of. The retention amount is the sum of the amount of the judgment which remains unpaid, one hundred twenty-five dollars, and an amount equal to nine months of interest on the amount of the judgment which remains unpaid. The garnishee summons must also state that~~

c. ~~That~~ the garnishee shall retain property, earnings, or money in the garnishee's possession pursuant to this chapter until the plaintiff

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<sup>156</sup> Section 32-09.1-07 was also amended by section 3 of House Bill No. 1211, chapter 289.



causes a writ of execution to be served upon the garnishee or until the defendant authorizes release to the plaintiff ~~and must state that~~.

- d. ~~That~~ after the expiration of the period of time specified in section 32-09.1-20, the garnishee shall release all retained property, earnings, and money to the defendant and is discharged and relieved of all liability on the garnishee summons. ~~The garnishee summons must state that no~~
- e. ~~That an~~ employer may not discharge ~~any~~ an employee because the employee's property, earnings, or money are subject to garnishment. ~~The garnishee summons must state that~~
- f. ~~That~~ any assignment of wages made by the defendant or indebtedness to the garnishee incurred within ten days before the receipt of notice of the first garnishment on the underlying debt is void. ~~The garnishee summons must state the date of the entry of judgment against the defendant. The garnishee summons must state that~~
- g. ~~That~~ the defendant ~~shall~~ must provide to the garnishee within ten days after receipt of the garnishee summons a verified list of the dependent family members who reside with the defendant and their social security numbers, if any, to have the maximum amount subject to garnishment reduced under subsection 2 of section 32-09.1-03. ~~The garnishee summons must state that~~
- h. ~~That~~ failure of the defendant to provide a verified list to the garnishee within ten days after receipt of the garnishee summons is conclusive with respect to whether the defendant claims no family members.
2. Under subdivision a of subsection 1, the plaintiff may not require the garnishee to disclose indebtedness or property of the defendant in the garnishee's possession or under the garnishee's control to the extent that the indebtedness or property exceeds the retention amount.
3. The garnishee summons and notice to defendant must be substantially in the following form:

State of North Dakota	)	In _____ Court
	) ss.	
County of _____	)	_____
_____		
	Plaintiff	
against		Garnishee Summons and
_____		Notice to Defendant
	Defendant	
and		
_____		
	Garnishee	

The State of North Dakota to the above-named Garnishee:

You shall serve upon the plaintiff or the plaintiff's attorney, within twenty days after service of this summons upon you, a written disclosure, under oath, setting forth the amount of any debt you may owe to the defendant, \_\_\_\_\_ (give full name and residence of defendant) and a description of any property, money, or effects owned by the defendant which are in your possession. Your disclosure need not exceed \$\_\_\_\_\_. ~~(Enter 440 percent of the plaintiff's judgment which remains unpaid retention amount.)~~ The date of entry of the judgment against the defendant was \_\_\_\_\_ (enter date of entry of plaintiff's judgment) and the amount of the judgment that remains unpaid is \$\_\_\_\_\_.

The defendant shall provide you with a verified list of the names of dependent family members who reside with the defendant and their social security numbers if the defendant desires to have the garnishment amount reduced under subsection 2 of section 32-09.1-03. Failure of the defendant to provide the list to you is conclusive to establish that the defendant claims no dependent family members reside with the defendant.

Failure to disclose and withhold may make you liable to the plaintiff for the sum of \$\_\_\_\_\_. ~~(Enter the lesser of the plaintiff's judgment against the defendant or 440 percent of the retention amount that remains unpaid.)~~

You shall retain the defendant's nonexempt property, money, earnings, and effects in your possession until a writ of execution is served upon you, until the defendant authorizes release to the plaintiff, or until the expiration of 360 days from the date of service of this summons upon you. If no writ of execution has been served upon you or no agreement has been made for payment within 360 days, the garnishment ends and any property or funds held by you must be returned to the defendant if the defendant is otherwise entitled to their possession.

Any assignment of wages by the defendant or indebtedness to you incurred by the defendant within ten days before the receipt of the first garnishment on a debt is void and should be disregarded.

You may not discharge the defendant because the defendant's earnings are subject to garnishment.

Dated \_\_\_\_\_, \_\_\_\_.

By: \_\_\_\_\_

#### NOTICE TO DEFENDANT

To: \_\_\_\_\_

The garnishee summons, garnishment disclosure form, and written interrogatories (strike out if not applicable), that are served upon you, were also served upon \_\_\_\_\_, the garnishee.

\_\_\_\_\_  
(Attorneys for Plaintiff)

\_\_\_\_\_  
(Address)

---

(Telephone)

<sup>157</sup> **SECTION 2. AMENDMENT.** Section 32-09.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**32-09.1-09. Disclosure.**

1. Within the time as limited in the garnishee summons, 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 that are served upon the garnishee. The amount of the garnishee's disclosure need not exceed ~~one hundred ten percent of the amount of the plaintiff's judgment which remains unpaid, after subtracting the total of setoffs, defenses, exemptions, ownerships, or other interests~~ the retention amount. The written answers may be served personally or by mail. If disclosure is by a corporation or limited liability company, it must be verified by ~~some~~ an officer, a manager, or an agent having knowledge of the facts.
2. Disclosure must state:
  - 1- a. 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- b. 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- c. 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- d. 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- e. 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.

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<sup>157</sup> Section 32-09.1-09 was also amended by section 4 of House Bill No. 1211, chapter 289.

3. A garnishment disclosure form must be served upon the garnishee. The disclosure must be substantially in the following form, subject to subsection 3 of section 32-09.1-03:

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 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 under a pension or retirement program. "Earnings" does not include social security benefits or veterans' disability pension benefits, except when the benefits are subject to garnishment to enforce any order for the support of a dependent child. "Earnings" includes military retirement pay. "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld. If the garnishee summons was served upon you at a time when earnings from a prior completed pay period were owing but not paid, complete the following disclosure for earnings from both the past pay period and the current pay period.
2. Money. Any amounts due and owing to defendant from the garnishee, except for earnings. (amount and facts)
3. Property. Any personal property, instruments, or papers belonging to the defendant and in the possession of the garnishee. (description, estimated value, and facts)
4. **Adverse interest and setoff.** Any setoff, defense, lien, or claim by the garnishee or other persons by reason of ownership or interest in the defendant's property. You must state the name and address and the nature of that person's claim if known. (Any assignment of wages made by the defendant or any indebtedness to a garnishee within ten days before the receipt of the first garnishment on a debt is void and should be disregarded.)

3. 5. Dependent. Any family member of the defendant who is residing in the defendant's residence. (If properly claimed within ten days after receipt of the garnishee summons.)

4. ~~Worksheet~~

6. Earnings worksheet:

- |    |   |       |
|----|---|-------|
| a. | Total earnings in pay period  | _____ |
| b. | Federal tax   | _____ |
| c. | State tax   | _____ |
| d. | FICA (social security/medicare)   | _____ |
| e. | Total deductions (lines b+c+d)  | _____ |
| f. | Disposable earnings (line a less line e)  | _____ |
| g. | Twenty-five percent of line f   | _____ |
| h. | Minimum wage exemption<br>(minimum wage times forty hours times<br>number of weeks in pay period) | _____ |
| i. | Line f less line h  | _____ |
| j. | Line g or line i (whichever is less)  | _____ |
| k. | Dependent exemption (twenty dollars<br>per dependent per week, if claimed)                        | _____ |
| l. | Adverse interest or setoff  | _____ |
| m. | Total of lines k and l  | _____ |
| n. | Line j less line m ( <u>the amount of earnings<br/>subject to garnishment</u> )                   | _____ |

Line n is the amount subject to garnishment (not to exceed 40 percent of the amount of the judgment which remains unpaid).

7. Total of property, earnings, and money. The garnishee shall add the total of property, earnings, and money and if this sum is ten dollars or more, the garnishee shall retain this amount, not to exceed the retention amount identified by the plaintiff in the garnishee summons.

Signature \_\_\_\_\_  
 Garnishee or Authorized Representative  
 of Garnishee

\_\_\_\_\_  
 Title

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
 Notary Public

**SECTION 3. AMENDMENT.** Section 32-09.1-14 of the North Dakota Century Code is amended and reenacted as follows:

**32-09.1-14. Default.** If any garnishee who is duly summoned willfully fails to serve disclosure as required in this chapter, the court, upon proof by affidavit of the creditor, may render judgment against the garnishee for an amount not exceeding the lesser of the plaintiff's judgment against the defendant or one hundred ten percent of the amount which remains unpaid, whichever is the smaller the retention amount as defined under section 32-09.1-07. The creditor shall serve the garnishee with a copy of the affidavit and a notice of intent to take default judgment. The court upon good cause shown may remove the default and permit the garnishee to disclose on terms as may be just.

**SECTION 4. AMENDMENT.** Section 32-09.1-15 of the North Dakota Century Code is amended and reenacted as follows:

**32-09.1-15. Judgment against garnishee.** Judgment against a garnishee ~~shall~~ must be rendered, if at all, for the amount due the defendant, or so much thereof as may be necessary to satisfy the plaintiff's judgment against the defendant, with costs taxed and allowed in the proceeding against the garnishee but not to exceed ~~one hundred ten percent of the amount which remains unpaid~~ the retention amount defined under section 32-09.1-07. The judgment ~~shall~~ must discharge the garnishee from all claims of all the parties named in the process to the property, earnings, or money paid, delivered, or accounted for by the garnishee by force of the judgment. When ~~any~~ a person is charged as garnishee by reason of any property in possession other than an indebtedness payable in money, that person shall deliver the property, or so much ~~thereof~~ of the property as may be necessary, to the officer holding execution, and the property ~~shall~~ must be sold and the proceeds accounted for in the same manner as if ~~it~~ the property had been taken on execution against the defendant. The garnishee ~~shall~~ may not be compelled to deliver any specific articles at any time or place other than as stipulated in the contract with the defendant.

Approved April 13, 2007  
 Filed April 16, 2007

**CHAPTER 291****SENATE BILL NO. 2242**

(Senators Cook, Anderson, Nething)  
(Representatives Aarsvold, Kretschmar, Wrangham)

**JOINT POWERS AGREEMENT GOVERNMENTAL  
LIABILITY**

AN ACT to amend and reenact subdivision a of subsection 6 of section 32-12.1-02 of the North Dakota Century Code, relating to the definition of a political subdivision under laws governing claims against political subdivisions.

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

**SECTION 1. AMENDMENT.** Subdivision a of subsection 6 of section 32-12.1-02 of the North Dakota Century Code is amended and reenacted as follows:

- a. Includes all counties, townships, park districts, school districts, cities, public nonprofit corporations, administrative or legal entities responsible for administration of joint powers agreements, and any other units of local government which are created either by statute or by the Constitution of North Dakota for local government or other public purposes, except no new units of government or political subdivisions are created or authorized by this chapter.

Approved March 7, 2007  
Filed March 8, 2007

**CHAPTER 292****HOUSE BILL NO. 1322**

(Representatives Keiser, Clark)  
(Senators Cook, Potter)

**STATE CONTRACT INDEMNIFICATION AND  
INSURANCE PROVISIONS**

AN ACT to create and enact a new section to chapter 32-12.2 of the North Dakota Century Code, relating to indemnification and insurance provisions in state contracts.

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

**SECTION 1.** A new section to chapter 32-12.2 of the North Dakota Century Code is created and enacted as follows:

**Indemnification and insurance requirements in state contracts.**

1. The director of the office of management and budget shall establish guidelines for indemnification and insurance provisions in contracts that may be entered by an executive branch state agency. The director shall consult with representatives of executive branch state agencies, the insurance industry, and the business community to establish and revise the guidelines and provisions. The guidelines must establish procedures for determining the appropriate indemnification and insurance provisions in contracts.
2. If a contract for services requires a provision for indemnification, the contract must require the contractor to indemnify the state and its agencies, officers, and employees for vicarious liability, but may not require indemnification for the contributory negligence, comparative degree of fault, sole negligence, or intentional misconduct of the state or its agencies, officers, and employees, unless the director of the office of management and budget or the director's designee determines a more stringent indemnification provision is appropriate. If indemnification is required, the contract must require that the state be endorsed on the contractor's commercial general liability policy as an additional insured or must require an equivalent form of protection for the state.
3. This section does not apply to a contract between an executive branch state agency and another person that is the owner of private property that is being used to accommodate a state construction project.
4. The failure of the state to comply with subsection 2 does not void any part of a contract.

Approved April 11, 2007  
Filed April 13, 2007



**CHAPTER 293****SENATE BILL NO. 2214**

(Senators Lyson, Heitkamp, Krauter)  
(Representatives Carlisle, Delmore, S. Meyer)

**EMINENT DOMAIN**

AN ACT to amend and reenact section 2-02-02, subdivision c of subsection 4 of section 2-06-16, section 2-06-20, subsection 7 of section 6-09-15, subsection 7 of section 10-13-03, subsection 1 of section 11-09.1-05, sections 11-36-17 and 15-09-05, subsection 8 of section 15.1-09-33, subsection 7 of section 20.1-02-05, subsection 13 of section 23-11-11, sections 24-01-18, 24-05-09, 24-17-09, and 32-15-01, subsections 22, 36, 59, 66, 67, and 68 of section 40-05-01, subsection 19 of section 40-05-02, section 40-05-11, subsection 1 of section 40-05.1-06, sections 40-22-38, 40-34-01, and 40-34-15, subsection 1 of section 40-35-03, section 40-39-02, subsection 1 of section 40-49-12, section 40-58-02, subsection 3 of section 40-58-07, subsection 3 of section 40-61-03, subsection 4 of section 40-61-05, sections 48-02.1-05 and 49-17.2-18, subsection 3 of section 49-19-01, sections 49-19-12 and 54-17-10, subsection 8 of section 54-17.2-03, sections 54-18-04 and 61-02-22, subsection 6 of section 61-07-01, subsections 7 and 8 of section 61-07-03, subsection 3 of section 61-07-16, and sections 61-21-19, 61-21-64, 61-21.1-06, and 61-35-49 of the North Dakota Century Code, relating to the exercise of the power of eminent domain; to repeal section 40-58-08 of the North Dakota Century Code, relating to the use of eminent domain for urban renewal; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 2-02-02 of the North Dakota Century Code is amended and reenacted as follows:

**2-02-02. Property - How acquired.** Private property needed by a county, city, park district, or township for an airport or landing field, or for the expansion of an airport or landing field, may be acquired by grant, purchase, lease, or other means, if ~~such~~ the political subdivision is able to agree with the owners of ~~said~~ the property on the terms of ~~such~~ the acquisition, and otherwise, subject to chapter 32-15, by right of eminent domain.

**SECTION 2. AMENDMENT.** Subdivision c of subsection 4 of section 2-06-16 of the North Dakota Century Code is amended and reenacted as follows:

- c. ~~Eminent~~ Subject to chapter 32-15, eminent domain proceedings under this section may be instituted by the joint board only by authority of the governing bodies of the constituent public agencies of the joint board. If so authorized, such proceedings must be instituted in the names of the constituent public agencies jointly, and the property so acquired shall be held by said public agencies as tenants in common.

**SECTION 3. AMENDMENT.** Section 2-06-20 of the North Dakota Century Code is amended and reenacted as follows:

**2-06-20. Out-of-state airport jurisdiction authorized - Reciprocity with adjoining states and governmental agencies.**

1. For the purpose of this section, "governmental agency" means any municipality, city, town, county, public corporation, or other public agency.
2. This state or any governmental agency of this state having any powers with respect to planning, establishing, acquiring, developing, constructing, enlarging, improving, maintaining, equipping, operating, regulating, or protecting airports or air navigation facilities within this state, may exercise those powers within any state or jurisdiction adjoining this state, subject to the laws of that state or jurisdiction.
3. Any state adjoining this state or any governmental agency thereof may plan, establish, acquire, develop, construct, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities within this state, subject to the laws of this state applicable to airports and air navigation facilities. ~~The~~ Subject to chapter 32-15, the adjoining state or governmental agency has the power of eminent domain in this state, which must be exercised in the manner provided by the laws of this state governing condemnation proceedings, provided that the power of eminent domain may not be exercised unless the adjoining state authorizes the exercise of that power therein by this state or any governmental agency thereof having any of the powers mentioned in this section.
4. The powers granted in this section may be exercised jointly by two or more states or governmental agencies, including this state and its governmental agencies, in such combination as may be agreed upon by them.

This section may be cited as the "Extraterritorial Airports Section".

<sup>158</sup> **SECTION 4. AMENDMENT.** Subsection 7 of section 6-09-15 of the North Dakota Century Code, as effective through July 31, 2009, is amended and reenacted as follows:

7. Acquire real or personal property or property rights by purchase, lease, or, subject to chapter 32-15, the exercise of the right of eminent domain and may construct, remodel, and repair buildings.

<sup>159</sup> **SECTION 5. AMENDMENT.** Subsection 7 of section 6-09-15 of the North Dakota Century Code, as effective after July 31, 2009, is amended and reenacted as follows:

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<sup>158</sup> Section 6-09-15 was also amended by section 23 of House Bill No. 1014, chapter 14, section 1 of House Bill No. 1088, chapter 87, and section 5 of Senate Bill No. 2214, chapter 293.

<sup>159</sup> Section 6-09-15 was also amended by section 23 of House Bill No. 1014, chapter 14, section 1 of House Bill No. 1088, chapter 87, and section 4 of Senate Bill No. 2214, chapter 293.

7. Acquire real or personal property or property rights by purchase, lease, or, subject to chapter 32-15, the exercise of the right of eminent domain and may construct, remodel, and repair buildings.

**SECTION 6. AMENDMENT.** Subsection 7 of section 10-13-03 of the North Dakota Century Code is amended and reenacted as follows:

7. ~~To Subject to chapter 32-15~~, to have and exercise the power of eminent domain to acquire private property for its use, such right to be paramount except as to property of the state or any political subdivision thereof.

<sup>160</sup> **SECTION 7. AMENDMENT.** Subsection 1 of section 11-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

1. Acquire, hold, operate, and dispose of property within or without the county limits, and, subject to chapter 32-15, exercise the right of eminent domain for those purposes.

**SECTION 8. AMENDMENT.** Section 11-36-17 of the North Dakota Century Code is amended and reenacted as follows:

**11-36-17. Public purpose.** ~~The Subject to chapter 36-15~~, the acquisition of any land, or interest therein, pursuant to this chapter, the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, and protection of ports and port facilities and the exercise of any other powers granted to port authorities and other public agencies, to be severally or jointly exercised, are to be public and governmental functions, exercised for a public purpose, and matters of public necessity. All land and other property and privileges acquired and used by or on behalf of any authority or other public agency in the manner and for the purposes enumerated in this chapter must be acquired and used for public and governmental purposes and as a matter of public necessity.

**SECTION 9. AMENDMENT.** Section 15-09-05 of the North Dakota Century Code is amended and reenacted as follows:

**15-09-05. Disagreement as to purchase price - Condemnation - Procedure - Fixing values.** If the applicant is unwilling to pay the price for a conveyance fixed by the board of university and school lands, the applicant may maintain an action in the district court against the state to condemn the land under ~~the rules which govern other condemnation proceedings~~ chapter 32-15. The amount awarded by the court or jury as damages for the taking of an entire tract, however, may not be less than the appraised value thereof, and the board, court, or jury, in fixing the amount to be paid for an entire tract or a part thereof, shall take into consideration the appraised value of the land, its actual value for all ordinary purposes, and any increased value it may have for any special and unusual purpose by reason of the existence of the facts authorizing the exercise of the power of eminent domain. If the land is desired for a gravel pit, its value may be estimated with reference to the existence of a demand for gravel, taking into consideration the necessities of the person seeking to acquire the land. If the land is desired for

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<sup>160</sup> Section 11-09.1-05 was also amended by section 1 of Senate Bill No. 2380, chapter 528.

townsite purposes, consideration must be given to the value of the land to the state if it were used by the state for that purpose, and consideration also must be given to the necessity for a townsite at the place in question warranting the exercise of the power of eminent domain for that purpose. If the land is desired for other purposes, similar elements of value must be considered.

<sup>161</sup> **SECTION 10. AMENDMENT.** Subsection 8 of section 15.1-09-33 of the North Dakota Century Code is amended and reenacted as follows:

8. ~~Exercise~~ Subject to chapter 32-15, exercise the power of eminent domain to acquire real property for school purposes.

<sup>162</sup> **SECTION 11. AMENDMENT.** Subsection 7 of section 20.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

7. With the governor's approval, purchase, lease, or, subject to chapter 32-15, condemn real estate, when it is required to carry out this title, and sell it when it is no longer required, in the name of the state.

<sup>163</sup> **SECTION 12. AMENDMENT.** Subsection 13 of section 23-11-11 of the North Dakota Century Code is amended and reenacted as follows:

13. ~~To~~ Subject to chapter 32-15, acquire real property by the exercise of the power of eminent domain.

**SECTION 13. AMENDMENT.** Section 24-01-18 of the North Dakota Century Code is amended and reenacted as follows:

**24-01-18. Right of way and materials may be acquired by purchase or eminent domain.** The director, by order, on behalf of the state, and as part of the cost of constructing, reconstructing, widening, altering, changing, locating, relocating, aligning, realigning, or maintaining a state highway, or of providing a temporary road for public use, may purchase, acquire, take over, or, subject to section 32-15-01, condemn under the right and power of eminent domain, for the state, any and all lands in fee simple or such easements thereof which the director deems necessary for present public use, either temporary or permanent, or which the director deems necessary for reasonable future public use, and to provide adequate drainage in the improvement, construction, reconstruction, widening, altering, changing, locating, relocating, aligning, realigning, or maintaining of a state highway, provided, however, as to any and all lands acquired or taken for highway, road, or street purposes, the director may not obtain any rights or interest in or to the oil, gas, or fluid minerals on or underlying said lands. No county may be required to participate in the cost or expense of right of way for the state highway system. By the same means, the director may secure any and all materials, including clay, gravel, sand, or rock, or the lands necessary to secure such material, and the necessary land or easements

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<sup>161</sup> Section 15.1-09-33 was also amended by section 4 of Senate Bill No. 2030, chapter 162.

<sup>162</sup> Section 20.1-02-05 was also amended by section 1 of House Bill No. 1402, chapter 226.

<sup>163</sup> Section 23-11-11 was also amended by section 3 of House Bill No. 1033, chapter 403, and section 1 of Senate Bill No. 2273, chapter 242.

thereover, to provide ways and access thereto. The director may acquire such land or materials notwithstanding that the title thereto may be vested in the state or any division thereof; provided, however, that no interests in gas, oil, or fluid minerals may be acquired by this procedure.

**SECTION 14. AMENDMENT.** Section 24-05-09 of the North Dakota Century Code is amended and reenacted as follows:

**24-05-09. Purchase or condemnation of right of way.** The board of county commissioners of any county of the state, by resolution or order, as part of the cost of constructing, reconstructing, widening, altering, changing, locating, relocating, aligning, realigning, or maintaining, any highway in said county, may purchase, acquire, take over, or, subject to section 32-15-01, condemn, under the right and power of eminent domain, for such county, any and all lands which it deems necessary for the present use, either temporary or permanent, and to provide adequate drainage in the improvement, constructing, reconstructing, widening, altering, changing, locating, relocating, aligning, realigning, or maintaining of any highways in said county, and by the same means it may acquire said lands notwithstanding the fact that the title thereto is vested in the state or any of its subdivisions. Whenever the board of county commissioners determines, by resolution or order, that the public necessity requires the taking of land as aforesaid, it shall cause said lands to be surveyed and described and a plat thereof prepared and recorded in the office of the recorder of the county wherein the same is located. The board of county commissioners, or its duly authorized agents and employees, may enter upon any land for the purpose of making such survey, examination, or test, but in case of damages to the premises the board of county commissioners forthwith shall pay to the owner of said premises the amount of such damages.

**SECTION 15. AMENDMENT.** Section 24-17-09 of the North Dakota Century Code is amended and reenacted as follows:

**24-17-09. Duties and powers of the director.**

1. The director is authorized:
  - ~~4.~~ a. To designate tracts of land adjacent to the state highway system which are necessary for the restoration, preservation, and enhancement of scenic beauty.
  - ~~2.~~ b. To regulate the erection, construction, or placing of any sign, display, or device within six hundred sixty feet [201.17 meters] of the nearest edge of the right of way and to adopt standards relating to size, lighting, and spacing thereof in conformity with 23 U.S.C. 131, provided ~~said~~ the rules are not more restrictive than those provided thereunder.
  - ~~3.~~ c. To establish permits authorizing the erection, construction, placement, replacement, repair, and maintenance of any outdoor sign, display, or device, which is within six hundred sixty feet [201.17 meters] of the nearest edge of the right of way and visible from any place on the main traveled way of the state highway system; to establish a fee schedule for such permits and to prescribe rules for the issuance thereof.

4. d. To determine unzoned commercial or unzoned industrial areas along the state highway system by agreement with the secretary of transportation of the United States pursuant to 23 U.S.C. 131.
5. e. The director may designate which tracts of land are necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to the state highway system. The director shall acquire, improve, and maintain said tracts of land the director deems necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to the state highway system, and said tracts of land may be beyond six hundred sixty feet [201.17 meters] of the nearest edge of the right of way.
2. The interest in any land directed to be acquired and maintained under this section may be a fee simple or any lesser interest, as determined by the director to be reasonably necessary to accomplish the purposes of this section. ~~Such~~ The acquisition may be by gift, purchase, exchange, or, subject to section 32-15-01, condemnation under the right and power of eminent domain in the same manner that the director may acquire right of way for construction, reconstruction, widening, alteration, changing, locating, relocating, aligning, realigning, or maintaining a state highway.

**SECTION 16. AMENDMENT.** Section 32-15-01 of the North Dakota Century Code is amended and reenacted as follows:

**32-15-01. Eminent domain defined - How exercised - Condemnor defined - Exceptions.**

1. Eminent domain is the right to take private property for public use.
2. Private property ~~shall~~ may not be taken or damaged for public use without just compensation first having been made to or paid into court for the owner. ~~In case such~~ When private property is ~~so~~ taken by a person, ~~firm, private corporation, or limited liability company~~, no benefit to accrue from the proposed improvement ~~shall~~ may be allowed in ascertaining the compensation to be made therefor. ~~Such~~ Private property may not be taken for the use of, or ownership by, any private individual or entity, unless that property is necessary for conducting a common carrier or utility business. A determination of the compensation in all cases shall be ascertained must be made by a jury, unless a jury is waived. The right of eminent domain may be exercised in the manner provided in this chapter.
3. Notwithstanding any other provision of law, a public use or a public purpose does not include public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health.
4. For the purpose of this chapter "condemnor" means a person empowered to take property under the power of eminent domain.

**SECTION 17. AMENDMENT.** Subsections 22, 36, 59, 66, 67, and 68 of section 40-05-01 of the North Dakota Century Code are amended and reenacted as follows:

22. Extending ways and pipes over railroad property. To extend by condemnation, subject to chapter 32-15, or otherwise any street, alley, or highway over, under, or across, or to construct or lay any sewer, water pipe, or main under or through, any railroad track, right of way, or land of any railroad company within the corporate limits.
36. Waterworks system. To purchase, acquire by eminent domain in accordance with chapter 32-15, erect, lease, rent, manage, and maintain any system of waterworks, well reservoirs, pipes, machinery, buildings, and all other property comprising a waterworks system, such as hydrants, supply of water, fire stations, fire signals, fire engines, or fire apparatus that may be of use in the prevention and extinguishment of fires, and to fix and regulate the rates, use, and sale of water.
59. Public works project. To accept aid from, cooperate and contract with, and to comply with and meet the requirements of any federal or state agency for the establishment, construction, and maintenance of public works, including dams and reservoirs for municipal water supply, for water conservation, flood control, prevention of stream pollution, or sewage disposal. In furtherance thereof to acquire by purchase, lease, gift, or condemnation the necessary lands, rights of way, and easements for such projects, and to transfer and convey to the state or federal government, or any agency thereof, such lands, rights of way, and easements in consideration of the establishment and construction of, and the public benefits which will be derived from any such project. To enter into an agreement with any such government, agency, or municipality within or without this state, to hold such government, agency, or municipality harmless from any and all liability or claim of liability arising from the establishment, construction, and maintenance of such works, and to indemnify such government, agency, or municipality for any such liability sustained by it and to pay all costs of defending against any such claim. In furtherance thereof to acquire by purchase, lease, gift, or, subject to chapter 32-15, condemnation the necessary lands, rights of way, and easements for such projects, and to transfer and convey to such government, agency, or municipality, such lands, rights of way, and easements in consideration of the establishment and construction of, and the public benefits which will be derived from any such project, or to pay the cost of the acquisition of such lands, rights of way, and easements by such government, agency, or municipality. All actions herein authorized may be taken by resolution duly adopted by the governing body of the municipality. Any and all actions and proceedings heretofore taken by any municipality which are within the authority granted by this subsection are hereby legalized and validated.
66. Light and power plants and gas transmission or distribution systems. To purchase, acquire by eminent domain in accordance with chapter 32-15, erect, lease, rent, manage, and maintain electric light and power plants, gasworks, steam heating plants and appurtenances for distribution, and to regulate and fix the rates to its patrons and to jointly, with other municipalities, acquire by eminent domain, erect, construct, lease, rent, manage, and maintain any artificial or natural gas transmission or distribution lines or plants.
67. Flood control projects. To acquire, construct, maintain, operate, finance, and control flood control projects, both within and adjacent to such municipality, and for such purpose to acquire the necessary real

property and easements therefor by purchase and eminent domain, in accordance with chapter 32-15, and to adopt such ordinances as may reasonably be required to regulate the same.

68. Public restrooms. To acquire, construct, maintain, operate, finance, and control public restrooms and facilities within such municipality, and for such purpose to acquire the necessary real property therefor by purchase and eminent domain, in accordance with chapter 32-15, and to adopt such ordinances as may reasonably be required to regulate the same.

**SECTION 18. AMENDMENT.** Subsection 19 of section 40-05-02 of the North Dakota Century Code is amended and reenacted as follows:

19. Water supply - Acquire necessary property. To acquire by gift, grant, lease, easement, purchase, or, subject to chapter 32-15, by eminent domain, and to own, operate, maintain, and improve, all lands, structures, power plants, public works, and personal property, whether within or without this state, necessary for the maintenance and conservation of its water supply.

**SECTION 19. AMENDMENT.** Section 40-05-11 of the North Dakota Century Code is amended and reenacted as follows:

**40-05-11. Foreign city - Power to acquire by right of eminent domain, purchase, lease, own, and hold real estate in this state - Liability.** Any city of another state situated within five miles [8.05 kilometers] of the boundary line of this state may purchase, lease, own, and hold real estate in this state for waterworks or sewerage purposes and may improve the land for municipal purposes in the same manner as a city situated in this state, and may lease, let, or convey the land. Any city so situated ~~is hereby empowered to~~ may acquire, by purchase, gift, devise, or, subject to chapter 32-15, condemnation, any property, corporeal or incorporeal within this state, as may be necessary or convenient for the construction and maintenance of an electric power transmission line, which electric power transmission line has the function of connecting a municipal power plant, owned and operated by ~~said~~ that city, with distribution facilities owned by the government of the United States for distributing electric power generated at Garrison Dam. Such foreign city ~~shall be~~ is liable for all damages growing out of or incident to the ownership, use, or occupation of any such real estate in this state as if it were a municipality of this state.

<sup>164</sup> **SECTION 20. AMENDMENT.** Subsection 1 of section 40-05.1-06 of the North Dakota Century Code is amended and reenacted as follows:

1. To acquire, hold, operate, and dispose of property within or without the corporate limits, and, subject to chapter 32-15, exercise the right of eminent domain for such purposes.

**SECTION 21. AMENDMENT.** Section 40-22-38 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>164</sup> Section 40-05.1-06 was also amended by section 2 of Senate Bill No. 2380, chapter 528.



**40-22-38. Application of chapter to waterworks and water mains - Acquisition of waterworks, sewage treatment and disposal plants, and sewer systems.** The provisions of this chapter relating to water mains and waterworks shall apply only to municipalities which ~~that~~ own or contemplate owning a system of waterworks and water mains. In case of the purchase of a waterworks system or of a sewage treatment or disposal plant or of a system of sewers, either by eminent domain proceedings subject to chapter 32-15, or otherwise, a municipality may create improvement districts, direct the preparation of plans and specifications, adopt a resolution declaring the purchase of such facilities necessary, and take all other proceedings prescribed by this chapter which would be taken in case of the construction of such facilities by the municipality itself for the purpose of defraying the cost thereof by special assessment of the property benefited thereby. The property benefited may be specially assessed for the purchase of such facilities, either separately or as a part of a new system, the same as if said facilities were constructed entirely anew.

**SECTION 22. AMENDMENT.** Section 40-34-01 of the North Dakota Century Code is amended and reenacted as follows:

**40-34-01. Disposal of garbage or sewage in municipalities - Acquiring land.** Any municipality in this state, either individually or jointly by agreement, may own, acquire, construct, equip, extend, and improve, operate, and maintain, either within or without the corporate limits of the municipality, intercepting sewers, including pumping stations, a plant or plants for the treatment, purification, and disposal in a sanitary manner of the liquid and solid wastes, sewage, and night soil of the municipality, or a plant or system for the disposal of the garbage thereof, and may issue bonds therefor as herein prescribed. Any municipality may acquire by gift, grant, purchase, or condemnation necessary lands therefor, either within or without the corporate limits of the municipality and within or without the state of North Dakota. ~~Municipalities~~ Subject to chapter 32-15, municipalities may invoke and shall have all the rights and privileges granted to public corporations under existing laws with reference to eminent domain for the purpose of acquiring land for the uses mentioned in this section. Any municipality which has outstanding bonds issued pursuant to this chapter may issue additional bonds by the procedure herein prescribed for the purpose of refunding all or any part of such outstanding bonds, whether at or prior to maturity, or for the purpose of providing moneys to be deposited in escrow for the purchase or redemption of such bonds at or prior to maturity. Bonds issued for any of the purposes referred to herein may be combined in a single issue.

**SECTION 23. AMENDMENT.** Section 40-34-15 of the North Dakota Century Code is amended and reenacted as follows:

**40-34-15. Agreements between municipalities within and without state - Acquiring property - Erecting dams - Use of waters - Eminent domain.** If it is deemed expedient for the safety and health of the people, municipalities of this state may enter into agreements with each other, or jointly or severally with governmental agencies or municipalities outside the state, to erect and maintain intercepting sewers and sewage treatment plants, or may enter into contracts with governmental agencies or municipalities outside the state to furnish to such extraterritorial agencies or municipalities sewage disposal for such compensation and upon such terms and conditions as the parties under such agreement may stipulate. Whenever it shall be convenient or necessary as determined by a majority vote of the governing body or the respective governing bodies of such governmental agencies or municipalities, they may acquire, purchase, own, or maintain lands and personal property within or without this state and may improve the same and erect structures thereon, including

dams and damsites. If the governing body of a municipality or the respective governing bodies of municipalities shall determine to do so by a resolution adopted by a majority vote thereof, such municipalities may erect dams upon streams, watercourses, or other bodies of water located within or without this state, or constituting in whole or in part the boundary waters of this state, and may alter or improve the bed, banks, or courses of such streams, watercourses, or bodies of water. In the enjoyment of such power, municipalities may purchase and hold property within and without this state and, subject to chapter 32-15, may exercise the right of eminent domain as provided by the laws of this state, and may enter into contracts and engagements with persons, firms, corporations, limited liability companies, or with municipalities or governmental agencies located without this state for like purposes.

**SECTION 24. AMENDMENT.** Subsection 1 of section 40-35-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Acquire by gift, purchase, or, subject to chapter 32-15, the exercise of the right of eminent domain, property required to construct, reconstruct, improve, better, or extend any undertaking, whether wholly within or wholly without the municipality, or partially within and partially without the municipality, and easements, rights in lands, and water rights in connection therewith.

**SECTION 25. AMENDMENT.** Section 40-39-02 of the North Dakota Century Code is amended and reenacted as follows:

**40-39-02. Taking private property by purchase or eminent domain - Special assessments levied - Limitation on general tax.** If it is necessary to take private property in order to open, lay out, widen, or enlarge any street or alley in any incorporated municipality, it shall be done by purchase or, subject to chapter 32-15, by the exercise of the right of eminent domain. When property is purchased or a judgment for damages is entered for property taken for any such improvement, the governing body shall certify the purchase or judgment to the special assessment commission, which shall levy special assessments upon the property benefited to pay such judgment or the purchase price. Not more than three-fourths of the purchase price or judgment may be paid by the levy of a general tax upon all the taxable property in a city.

**SECTION 26. AMENDMENT.** Subsection 1 of section 40-49-12 of the North Dakota Century Code is amended and reenacted as follows:

1. Acquire by purchase, gift, devise, or, subject to chapter 32-15, condemnation, or otherwise, land anywhere within this state, or outside this state if located adjacent to a boundary of this state and of the park district, for parks, boulevards, and ways. The board ~~shall have~~ has the sole and exclusive authority to maintain, govern, and improve the land, and to provide for the erection of structures thereon. Such parks, boulevards, and ways ~~shall be~~ are considered for purposes of taxation and for all other purposes as being within the territorial limits of the municipality. If the board has acquired the legal title in fee to such lands, ~~the board~~ the board may sell and convey the same. A conveyance ~~shall~~ must be executed by the president and clerk of the board upon a resolution approved by not less than two-thirds of the members thereof.

**SECTION 27. AMENDMENT.** Section 40-58-02 of the North Dakota Century Code is amended and reenacted as follows:

**40-58-02. Findings and declarations of necessity.**

1. It is hereby found and declared that there exist in municipalities of the state slum and blighted areas which constitute a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of the state; that the existence of these areas contributes substantially and increasingly to the spread of disease and crime, constitutes an economic and social liability, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, aggravates traffic problems, and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of slums and blight is a matter of state policy and state concern in order that the state and its municipalities do not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, and, while contributing little to the tax income of the state and its municipalities, consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization, and other forms of public protection, services, and facilities. It is further found and declared that certain slum or blighted areas, or portions thereof, may require acquisition, clearance, and disposition subject to use restrictions, as provided in this chapter, since the prevailing condition of decay may make impracticable the reclamation of the area by conservation or rehabilitation; that other areas or portions thereof may, through the means provided in this chapter, be susceptible of conservation or rehabilitation in such a manner that the conditions and evils described in this section may be eliminated, remedied, or prevented; and that to the extent feasible salvable slum and blighted areas should be conserved and rehabilitated through voluntary action and the regulatory process.
2. It is further found and declared that there exist in municipalities of the state conditions of unemployment, underemployment, and joblessness detrimental to the economic growth of the state economy; that it is appropriate to implement economic development programs both desirable and necessary to eliminate the causes of unemployment, underemployment, and joblessness for the benefit of the state economy; and that tax increment financing is an economic development program designed to facilitate projects that create economic growth and development.
- ~~3. It is further found and declared that the powers conferred by this chapter are for public uses and purposes for which public money may be expended and the power of eminent domain exercised and that the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination.~~

**SECTION 28. AMENDMENT.** Subsection 3 of section 40-58-07 of the North Dakota Century Code is amended and reenacted as follows:

3. Within its area of operation, to enter upon any building or property in any development or renewal area in order to make surveys, appraisals, soundings, or test borings, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire by purchase, lease, option, gift, grant, bequest, devise, ~~eminent domain~~, or otherwise, any real property or personal property for its

administrative purposes together with any property improvements; to hold, improve, clear, or prepare for development or redevelopment any such property; to mortgage, pledge, hypothecate, or otherwise encumber or dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums for the insurance; and to enter into any contracts necessary to effectuate the purposes of this chapter; provided, however, that no statutory provision with respect to the acquisition, clearance, or disposition of property by public bodies restricts a municipality or other public body exercising powers under this subsection, in the exercise of those functions with respect to a development or renewal project, unless the legislative assembly shall specifically so state.

**SECTION 29. AMENDMENT.** Subsection 3 of section 40-61-03 of the North Dakota Century Code is amended and reenacted as follows:

3. To acquire in the name of the city by purchase or condemnation, and use necessary real property. All real property acquired by the authority by condemnation ~~shall~~ must be acquired in the manner provided in the condemnation law or in the manner provided by ~~law~~ chapter 32-15 for the condemnation of land by a city.

**SECTION 30. AMENDMENT.** Subsection 4 of section 40-61-05 of the North Dakota Century Code is amended and reenacted as follows:

4. An authority may itself acquire real property for a project in the name of the city at the cost and expense of the authority by purchase or condemnation pursuant to ~~the condemnation law or pursuant~~ chapter 32-15 and to the laws relating to the condemnation of land by cities. An authority shall have the use and occupancy of such real property so long as its corporate existence shall continue.

**SECTION 31. AMENDMENT.** Section 48-02.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**48-02.1-05. Right-of-way acquisition.** Private operators may acquire right of way and property by donation, lease, or purchase. When necessary for the construction, alteration, addition, extension, or improvement of any project under this chapter, a public authority may acquire, subject to chapter 32-15, any real or personal property by the law of eminent domain of this state and may lease the property or right of way to a private operator.

**SECTION 32. AMENDMENT.** Section 49-17.2-18 of the North Dakota Century Code is amended and reenacted as follows:

**49-17.2-18. Power of eminent domain - Restrictions on acquisition of public or railroad property.** An authority may acquire all real or personal property that it deems necessary for carrying out the purposes of this chapter, whether in fee simple absolute or lesser interest, by condemnation and the exercise of the power of eminent domain subject to chapter 32-15 and in accordance with chapter 49-09. An authority shall have no power of eminent domain with respect to property owned by another authority or subdivision or public agency of this or any other state without the consent of such authority, subdivision, or public agency. The authority ~~shall~~ may not condemn property owned or used by a railroad corporation unless the interstate commerce commission, or other authority with power to make the finding, has found

that the public convenience and necessity permit discontinuance of the rail service on the property.

**SECTION 33. AMENDMENT.** Subsection 3 of section 49-19-01 of the North Dakota Century Code is amended and reenacted as follows:

3. Engaged in the business of producing, purchasing, transporting for hire or transporting for sale within this state of natural gas, which is transported through pipelines, or any part of a pipeline, the right of way for which is granted or secured under the provisions of this chapter or, subject to chapter 32-15, through the exercise of the right of eminent domain; or

**SECTION 34. AMENDMENT.** Section 49-19-12 of the North Dakota Century Code is amended and reenacted as follows:

**49-19-12. When pipeline carrier may exercise right of eminent domain.**

Every common pipeline carrier which shall have filed with the commission its acceptance of the provisions of this chapter ~~shall have~~ has, subject to chapter 32-15, the right and power of eminent domain in the exercise of which it may enter upon and condemn the land, right of way, easements, and property of any person necessary for the construction, maintenance, or authorization of its pipeline. The manner and method of such condemnation, and the assessment and payment of the damages therefor ~~shall be~~ are the same as is provided by law in the case of railroads. The right of eminent domain and the right to use public lands, highways, or roads for right of way for pipelines shall be acquired only by compliance with the provisions of this chapter.

**SECTION 35. AMENDMENT.** Section 54-17-10 of the North Dakota Century Code is amended and reenacted as follows:

**54-17-10. Powers and duties of commission in operating industries.**

In the management, operation, and control of all utilities, industries, enterprises, and business projects established, owned, undertaken, administered, or operated by the state, and to accomplish the purposes of this chapter, the industrial commission shall:

1. Acquire by purchase, lease, or, subject to chapter 32-15, by exercise of the right of eminent domain, all necessary property or property rights, and hold and possess or sell the whole or any part thereof.
2. Construct and reconstruct necessary buildings on the properties acquired.
3. Equip, maintain, repair, and alter any and all properties acquired and the improvements thereon.
4. Generally use properties acquired and improvements made so as to promote such utilities, industries, enterprises, and business projects.

**SECTION 36. AMENDMENT.** Subsection 8 of section 54-17.2-03 of the North Dakota Century Code is amended and reenacted as follows:

8. Acquire by purchase, lease, or otherwise, on terms and conditions and in a manner as it determines to be proper, or, subject to chapter 32-15, 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.

**SECTION 37. AMENDMENT.** Section 54-18-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-18-04. Powers and duties of industrial commission in operating association.** To accomplish the purposes of this chapter, the industrial commission shall acquire by purchase, lease, or, subject to chapter 32-15, by exercise of the right of eminent domain all necessary property or property rights and may:

1. Construct, remodel, or repair all necessary buildings.
2. Purchase, lease, construct, or otherwise acquire warehouses, elevators, flour mills, factories, offices, plants, machinery, equipment, and all other things necessary, incidental, or convenient in the manufacturing and marketing of all kinds of raw and finished farm products within or without the state.
3. Dispose of all kinds of raw and finished farm products.
4. Buy, manufacture, store, mortgage, pledge, sell, exchange, or otherwise acquire or dispose of all kinds of manufactured and raw farm and food products and byproducts.
5. For the purpose of acquiring or disposing of all kinds of manufactured farm and food products and byproducts, establish and operate exchanges, bureaus, markets, and agencies, within or without the state, including foreign countries, on such terms and conditions and under such rules and regulations as the commission may determine.

**SECTION 38. AMENDMENT.** Section 61-02-22 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-22. Acquisition of necessary property and power of condemnation.** The commission ~~shall have~~ has full power and authority to acquire by purchase or exchange, upon such terms and conditions as ~~it may deem~~ the commission determines necessary and proper, and by condemnation in accordance with and subject to chapter 32-15 and the provisions of all laws applicable to the condemnation of property for public use, any lands, rights, water rights of whatever character, easements, franchises, and other property ~~deemed~~ determined necessary or proper for the construction, operation, and maintenance of works. ~~The provisions of this~~ This chapter ~~shall~~ does not be construed to require the commission, in condemning any riparian water right, to condemn also the riparian land to which such right may be incident. The title to all property purchased, acquired, or condemned ~~shall~~ must be taken in the name of the commission and held in trust for, and for the use and benefit of, the people of this state.

**SECTION 39. AMENDMENT.** Subsection 6 of section 61-07-01 of the North Dakota Century Code is amended and reenacted as follows:

6. ~~May~~ Subject to chapter 32-15, may exercise the right of eminent domain for the purpose of acquiring right of way for ditches, flumes, canals, pipelines, and other conveyance systems, sites for dams and reservoirs, wells and well fields, related drainage systems, and for any other

purpose or works necessary to establish and construct a complete system of irrigation works.

**SECTION 40. AMENDMENT.** Subsections 7 and 8 of section 61-07-03 of the North Dakota Century Code are amended and reenacted as follows:

7. Acquire by purchase, condemnation in accordance with chapter 32-15, or otherwise:
  - a. Rights of way for ditches, canals, pipelines, and other conveyance systems and sites for dams and reservoirs, wells and well fields, and other works for the appropriation of ground and surface water, and for pumping plants.
  - b. All lands, easements, and any and all property necessary for the construction, use, maintenance, repair, and improvement of dams, reservoirs, wells and well fields, and other works for the appropriation of ground and surface water, and canals, pipelines, and other conveyance systems.
  - c. Electric powerlines for the conveyance of electric power to operate pumping plants and all necessary appurtenances thereto.
  - d. Water rights, but the board shall be required to offer an alternative water supply of equal quantity and comparable quality, either through the district works or otherwise, to the holder of any water rights which have been condemned.
8. Subject to the limitations contained in this chapter and chapter 32-15, acquire by purchase, condemnation, or otherwise, any existing irrigation works for the use of the district.

**SECTION 41. AMENDMENT.** Subsection 3 of section 61-07-16 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~Exercise~~ Subject to chapter 32-15, exercise the right of eminent domain;

**SECTION 42. AMENDMENT.** Section 61-21-19 of the North Dakota Century Code is amended and reenacted as follows:

**61-21-19. Right of way - How acquired - Assessment of damages - Issuance of warrants.** ~~The~~ Subject to chapter 32-15, the right of way for the construction, operation, and maintenance of a proposed drain, if not conveyed to the county by the owner, may be acquired by eminent domain ~~in the manner prescribed by law.~~ If lands assessed for drainage benefits are not contiguous to the drain, access right of way thereto over the land of others may be acquired in the same manner. The right of way, when acquired, is the property of the county. The board may issue warrants in a sum sufficient to pay the damages assessed for the right of way. The warrants must be drawn upon the proper county treasurer or, if the water resource district treasurer is custodian of the drain funds, water resource district treasurer, and are payable out of drain funds in the hands of the treasurer that have been collected for the construction of the drain for which the right of way is sought to be obtained. The board shall negotiate the warrants at not less than the par value thereof and shall pay into court for the benefit of the owners of the right of way the amount to which each is entitled according to the assessment of damages, paying

the surplus, if any, to the county treasurer or water resource district treasurer, who shall place the same to the credit of the proper drain fund.

**SECTION 43. AMENDMENT.** Section 61-21-64 of the North Dakota Century Code is amended and reenacted as follows:

**61-21-64. Outlets.** A Subject to chapter 32-15, a board may, if found necessary, by process of eminent domain acquire land needed for a sufficient outlet for any established drain.

**SECTION 44. AMENDMENT.** Section 61-21.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**61-21.1-06. Eminent domain unaffected.** The approval or provision of financial assistance for any water project under this chapter does not change the right of any entity to exercise the power of eminent domain. The exercise of the power of eminent domain under this chapter is subject to chapter 32-15.

**SECTION 45. AMENDMENT.** Section 61-35-49 of the North Dakota Century Code is amended and reenacted as follows:

**61-35-49. Waterworks and water mains - Acquisition of waterworks, sewage treatment and disposal plants and sewer systems.** The provisions of this chapter relating to water mains and waterworks apply only to districts that own or contemplate owning a system of waterworks and water mains. In the purchase of a waterworks system or of a sewage treatment or disposal plant or of a system of sewers, either by eminent domain in accordance with chapter 32-15, or otherwise, a district may create improvement districts, direct the preparation of plans and specifications, adopt a resolution declaring the purchase of the facilities necessary, and take all other proceedings prescribed by this chapter which would be taken in case of the construction of such facilities by the district itself for the purpose of defraying the cost by special assessment of the benefited property. The benefited property may be specially assessed for the purchase of such facilities, either separately or as a part of a new system, the same as if the facilities were constructed entirely anew.

**SECTION 46. REPEAL.** Section 40-58-08 of the North Dakota Century Code is repealed.

**SECTION 47. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 5, 2007  
Filed April 5, 2007



**CHAPTER 294****SENATE BILL NO. 2216**

(Senator Holmberg)

**PAYMENT TO REDEEM**

AN ACT to create and enact a new section to chapter 32-19 of the North Dakota Century Code, relating to payment to redeem; and to amend and reenact section 32-19-22 of the North Dakota Century Code, relating to the service of notice before foreclosure.

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

**SECTION 1.** A new section to chapter 32-19 of the North Dakota Century Code is created and enacted as follows:

**Payment to redeem.** A person redeeming from a sheriff's sale may pay the required amount either to the holder of the certificate or to the sheriff. If there is a dispute as to the amount required to redeem, the person attempting to redeem shall deposit with the sheriff the amount the person calculates to be due and a written description of the basis for the calculation. The deposit has the effect of a redemption as of the date of deposit, subject to the subsequent payment of any additional amount determined to be due as of that date.

**SECTION 2. AMENDMENT.** Section 32-19-22 of the North Dakota Century Code is amended and reenacted as follows:

**32-19-22. Notice may be served by registered mail.** The notice before foreclosure may be served by ~~registered~~ mail, as provided in rule 4 of the North Dakota Rules of Civil Procedure, addressed to the owner of record at the owner's post-office address in the mortgage or by the records in the chain of title of the recorder of the county where the real estate is situated. If ~~such~~ the post-office address is not shown in the mortgage or in ~~such~~ the records, the notice may be served by ~~registered mail~~, as provided in rule 4 of the North Dakota Rules of Civil Procedure, addressed to the owner of record at the post office nearest any part or tract of the real estate.

Approved March 9, 2007

Filed March 12, 2007

# LABOR AND EMPLOYMENT

## CHAPTER 295

### HOUSE BILL NO. 1454

(Representatives Owens, Clark, Dietrich)

### MINIMUM WAGE INCREASE

AN ACT to create and enact a new section to chapter 34-06 of the North Dakota Century Code, relating to an increase in the state's minimum wage; to provide a contingent effective date; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 34-06 of the North Dakota Century Code is created and enacted as follows:

##### State minimum wage rate.

1. Except as otherwise provided under this chapter and rules adopted by the commissioner, every employer shall pay to each of the employer's employees:
  - a. Effective on the effective date of this Act, a wage of at least five dollars and eighty-five cents per hour;
  - b. Effective twelve months after the effective date of this Act, a wage of at least six dollars and fifty-five cents per hour; and
  - c. Effective twenty-four months after the effective date of this Act, a wage of at least seven dollars and twenty-five cents per hour.
2. This section does not limit the authority of the commissioner to adopt rules establishing a state minimum wage rate that differs from the rates established under subsection 1.

**SECTION 2. CONTINGENT EFFECTIVE DATE.** This Act becomes effective on the date in 2007 identified by the chairman of the legislative council in a certification filed by the legislative council with the secretary of state as the effective date of the increase in the federal minimum wage under the federal Fair Labor Standards Act of 1938.

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

Approved March 5, 2007  
Filed March 6, 2007

**CHAPTER 296****HOUSE BILL NO. 1070**

(Industry, Business and Labor Committee)  
(At the request of the Labor Commissioner)

**HOURS OF LABOR FOR MINORS**

AN ACT to amend and reenact section 34-07-15 of the North Dakota Century Code, relating to the maximum hours of labor of minors fourteen or fifteen years of age.

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

**SECTION 1. AMENDMENT.** Section 34-07-15 of the North Dakota Century Code is amended and reenacted as follows:

**34-07-15. Maximum hours of labor of minors fourteen or fifteen years of age - Notice to be posted.** A minor fourteen or fifteen years of age may not be employed or permitted to work at any occupation, except in domestic services and at farm labor, before the hour of seven a.m. nor after the hour of seven p.m., except that these hours are seven a.m. to nine p.m. from June first through labor day, nor more than eighteen hours during schoolweeks, nor more than three hours on schooldays, nor more than forty hours during nonschoolweeks, nor more than eight hours on nonschooldays. A schoolweek is considered to be any week ~~Monday~~ ~~Sunday~~ through ~~Sunday~~ ~~Saturday~~ in which a youth is required to be in attendance, for any period of time, four or more days. Provided, however, that the limitations restricting hours of work during schoolweeks and schooldays do not apply to minors who are not attending school because they are excepted from compulsory school attendance by subdivisions b, c, and d of subsection 1 of section 15.1-20-02. Every employer shall post, in a conspicuous place where minors are employed, a printed notice stating the hours of work required of the minors each day of the week, the hours of commencing and stopping work, and the hours allowed for dinner or other meals. The printed form of the notice must be furnished by the labor commissioner. The employment of any minor for a longer period than that stated in the notice is a violation of this chapter.

Approved March 6, 2007  
Filed March 7, 2007

**CHAPTER 297****SENATE BILL NO. 2193**

(Senators Holmberg, Hacker, Nething, Triplett)  
(Representatives Owens, Schneider)

**PUBLIC EMPLOYEE ACCESS TO LEGISLATIVE  
ASSEMBLY**

AN ACT to create and enact a new subsection to section 34-11.1-05 of the North Dakota Century Code, relating to prohibiting state agencies and political subdivisions from restricting employee access to the legislative assembly; to provide a penalty; and to declare an emergency.

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

**SECTION 1.** A new subsection to section 34-11.1-05 of the North Dakota Century Code is created and enacted as follows:

Restrict or attempt to restrict access of any employee to any member or committee of the legislative assembly.

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

Approved April 9, 2007  
Filed April 10, 2007

# LIENS

## CHAPTER 298

### HOUSE BILL NO. 1304

(Representatives N. Johnson, Dietrich)  
(Senator Klein)

#### LIEN AND SECURED TRANSACTION FILING FEES

AN ACT to amend and reenact sections 35-17-08, 35-30-06, 35-31-06, and 41-09-96 of the North Dakota Century Code, relating to certain lien and secured transaction filing fees.

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

**SECTION 1. AMENDMENT.** Section 35-17-08 of the North Dakota Century Code is amended and reenacted as follows:

**35-17-08. Fees - Penalty.** The fee for filing an agister's lien and related documents with the secretary of state or the county recorder is ~~ten dollars~~. ~~The fee for filing a termination statement is five dollars. The termination fee must be paid at the time the fee for filing the lien is paid. The fee for filing an amendment or assignment of an agister's lien is ten dollars the same as that provided for in section 41-09-96.~~ If a lienholder fails to file a termination statement within sixty days after the lien ~~is~~ has been satisfied, the lienholder is liable to the debtor for one hundred dollars.

**SECTION 2. AMENDMENT.** Section 35-30-06 of the North Dakota Century Code is amended and reenacted as follows:

**35-30-06. Fees - Penalty.** The fee for filing an agricultural processor's lien and related documents with the secretary of state or the county recorder is ~~ten dollars~~. ~~The fee for filing a termination statement is five dollars. The termination fee must be paid at the time the fee for filing the lien is paid. The fee for filing an amendment or assignment of an agricultural processor's lien is ten dollars the same as that provided for in section 41-09-96.~~ If a lienholder fails to file a termination statement within sixty days after the lien has been satisfied, the lienholder is liable to the debtor for one hundred dollars.

**SECTION 3. AMENDMENT.** Section 35-31-06 of the North Dakota Century Code is amended and reenacted as follows:

**35-31-06. Fees - Penalty.** The fee for filing an agricultural supplier's lien and related documents with the secretary of state or the county recorder is ~~ten dollars~~. ~~The fee for filing a termination statement is five dollars. The termination fee must be paid at the time the fee for filing the lien is paid. The fee for filing an amendment or assignment of an agricultural supplier's lien is ten dollars the same as that provided for in section 41-09-96.~~ If a lienholder fails to file a termination statement within sixty days after the lien has been satisfied, the lienholder is liable to the debtor for one hundred dollars.

**SECTION 4. AMENDMENT.** Section 41-09-96 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-96. (9-525) Fees.**

1. The fee for filing and indexing an original statement under this title, fifteen dollars plus one dollar per additional page. When a nonstandard statement is presented for filing, an additional fee of five dollars must be paid. An additional fee may not be charged for the same statement to gain protection under the central notice system.
2. The fee for filing and indexing an amendment, ~~continuation, assignment, release~~ including continuations, assignments, releases, or subordination correction statements under this title, ten dollars plus one dollar per additional page. An additional fee may not be charged for the same document to gain protection under the central notice system.
3. A fee may not be charged for responding to a request for information from the filing office communicating whether there is on file any financing statement or verified statement naming a particular debtor.
4. The fee for a filing office providing information on specific filings on a particular debtor, ~~including listing up to four lines of collateral covered by each filing,~~ is seven dollars per debtor for the first five entries, plus two dollars for each additional five entries or fraction thereafter.
5. The fee for a filing office providing copies of each filing for a particular debtor is seven dollars per debtor plus two dollars per page for each page over three pages.
6. The fee for a filing office providing certified copies of filings on a particular debtor is seven dollars plus one dollar per page for attachments.
7. For furnishing copies only of a filed instrument, one dollar per printed page.
8. Any fees collected by the secretary of state pursuant to this chapter must be deposited in the general fund in the state treasury, except the fees collected under subsection 6 of section 41-09-94, must be deposited in the secretary of state's general services operating fund.

Approved April 10, 2007  
Filed April 11, 2007

**CHAPTER 299****HOUSE BILL NO. 1338**

(Representatives DeKrey, Mueller, Uglem)  
(Senators Erbele, Taylor)

**AGRICULTURAL PROCESSOR'S AND SUPPLIER'S  
LIENS**

AN ACT to amend and reenact sections 35-30-01 and 35-31-01 of the North Dakota Century Code, relating to agricultural processor's and supplier's liens.

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

**SECTION 1. AMENDMENT.** Section 35-30-01 of the North Dakota Century Code is amended and reenacted as follows:

**35-30-01. Agricultural processor's lien authorized.** Any person who processes any crop or agricultural product is entitled to a lien upon the crop or product processed for the reasonable value of the services performed. A lien taken pursuant to this section upon anything other than the crop or product processed is void. As used in this chapter, the term "processor" includes persons threshing, combining, drying, or harvesting any crop or agricultural product. The Except as otherwise provided in this section, the agricultural processor's lien is effective from the date the processing is completed. An agricultural processor's lien filed as a security interest created by contract to secure money advanced or loaned for any purpose is not effective to secure a priority over liens filed under section 35-05-01. This chapter does not limit the sale, assignment, or transfer of an agricultural processor's lien. However, the priority of an effective agricultural processor's lien is not transferable. After sale, assignment, or transfer, the priority of an effective agricultural processor's lien is to be determined as of the date the lien was filed and in accordance with section 41-09-33.

**SECTION 2. AMENDMENT.** Section 35-31-01 of the North Dakota Century Code is amended and reenacted as follows:

**35-31-01. Agricultural supplier's lien authorized.** Any person who furnishes supplies used in the production of crops, agricultural products, or livestock is entitled to a lien upon the crops, products produced by the use of the supplies, and livestock and their products including milk. As used in this chapter, the term "supplies" includes seed, petroleum products, fertilizer, farm chemicals, insecticide, feed, hay, pasturage, veterinary services, or the furnishing of services in delivering or applying the supplies. An Except as otherwise provided in this section, an agricultural supplier's lien filed in accordance with section 35-31-02 is effective from the date the supplies are furnished or the services performed. An agricultural supplier's lien filed as a security interest created by contract to secure money advanced or loaned for any purposes is not effective to secure a priority over liens filed under section 35-05-01. This chapter does not limit the sale, assignment, or transfer of an agricultural supplier's lien. However, the priority of an effective agricultural supplier's lien is not transferable from the original lienholder. After sale,

assignment, or transfer, the priority of an effective agricultural supplier's lien is to be determined as of the date the lien was filed and in accordance with section 41-09-33.

Approved March 9, 2007

Filed March 12, 2007



**CHAPTER 300****SENATE BILL NO. 2285**

(Senator Krauter)

(Representatives Froelich, Kerzman, Mueller)

**AGRICULTURAL PROCESSOR'S LIEN NOTICES**

AN ACT to amend and reenact section 35-30-02 of the North Dakota Century Code, relating to notification of debtor of agricultural processor's lien.

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

**SECTION 1. AMENDMENT.** Section 35-30-02 of the North Dakota Century Code is amended and reenacted as follows:

**35-30-02. Procedure to obtain lien.**

1. To obtain an agricultural processor's lien, the person entitled to the lien, within ninety days after the processing is completed, shall file a verified statement in the office of the recorder in any county in this state or in the office of the secretary of state. The statement must contain the following information:
  1. a. The name and address of the person for whom the processing was done.
  2. b. The name and address of the processor.
  3. c. A description of the crops or agricultural products and their amount, if known, subject to the lien together with a reasonable description, including the county as to the location where the crops or agricultural products were grown and the year the crop is to be harvested or was harvested.
  4. d. The price agreed upon for processing, or if no price was agreed upon, the reasonable value of the processing.
  5. e. The social security number or, in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number of the person for whom the processing was done.
  6. f. A description of the processing services and the first date the services were furnished.
2. The secretary of state and the office of the recorder in any county in this state with which a verified statement under subsection 1 is submitted for filing shall reject the statement unless proof of mailing of notification of the lien to the debtor's last-known address by registered or certified mail with return receipt requested is filed with the statement.

3. The secretary of state shall prescribe one form that can be used to obtain a lien under this section or gain protection under the central notice system, or both. Before a processor's lien is filed, a billing statement for the services performed must include notice to the agricultural producer that if the amount due to the agricultural processor is not satisfied a lien may be filed.

Approved April 26, 2007  
Filed April 27, 2007

# LIVESTOCK

## CHAPTER 301

### SENATE BILL NO. 2114

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

### BOARD OF ANIMAL HEALTH FEES

AN ACT to amend and reenact section 36-01-08 of the North Dakota Century Code, relating to state board of animal health fees; and to provide a continuing appropriation.

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

**SECTION 1. AMENDMENT.** Section 36-01-08 of the North Dakota Century Code is amended and reenacted as follows:

**36-01-08. Duties - Rules - Fees - Continuing appropriation.** The board shall protect the health of the domestic animals and nontraditional livestock of this state, shall determine and employ the most efficient and practical means for the prevention, suppression, control, and eradication of dangerous, contagious, and infectious diseases among the domestic animals and nontraditional livestock of this state, and shall prevent the escape and release of an animal injurious to or competitive with agriculture, horticulture, forestry, wild animals, and other natural resource interests. For the purpose of preventing the escape and release of an animal injurious to or competitive with agriculture, horticulture, forestry, wild animals, and other natural resource interests, the board may, by rule, quarantine any such animal, cause any such animal to be killed, regulate or prohibit the arrival in or departure from this state of any such animal, and at the cost of the owner thereof, the board may detain any animal found to be in violation of any rule or prohibition. Any matter relating to the health and welfare of domestic animals and nontraditional livestock and not specifically assigned by statute to another entity is deemed to be within the authority of the board. The board may make rules to carry into effect the purposes of this chapter and other duties prescribed in this title. The commissioner shall collect ~~six cents~~ fees for the actual direct cost of providing each brucellosis tag and, each identification tag, and ~~eight dollars~~ for each health book the commissioner distributes. The fees collected by the commissioner must be deposited in the state general fund agriculture commissioner's operating fund and are appropriated on a continuing basis to the state board of animal health to be used to enforce this chapter.

Approved March 7, 2007

Filed March 8, 2007

**CHAPTER 302****SENATE BILL NO. 2338**

(Senators Olafson, Erbele, Taylor, Wanzek)  
(Representatives Herbel, Pinkerton)

**ANIMAL TRACKING DATA BASE**

AN ACT to create and enact a new section to chapter 36-01 of the North Dakota Century Code, relating to the state board of animal health; to provide an appropriation; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 36-01 of the North Dakota Century Code is created and enacted as follows:

**Duties - Animal tracking.** The board shall develop and maintain an animal tracking data base to assist with tracking animal movements for animal health purposes only. The information obtained and maintained in the data base is subject to open records laws as provided for in section 36-09-28.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$90,836, or so much of the sum as may be necessary, to the state board of animal health for the development and maintenance of an animal tracking data base, for the biennium beginning July 1, 2007, and ending June 30, 2009.

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

Approved April 10, 2007  
Filed April 11, 2007

**CHAPTER 303****HOUSE BILL NO. 1421**

(Representatives Headland, Brandenburg, Froelich, Pollert)  
(Senators Erbele, Wanzek)

**HUMANE ANIMAL TREATMENT**

AN ACT to amend and reenact sections 36-21.1-01 and 36-21.1-02 of the North Dakota Century Code, relating to the humane treatment of animals.

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

**SECTION 1. AMENDMENT.** Section 36-21.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**36-21.1-01. Definitions.** In this chapter, unless the context otherwise requires:

1. "Abandoned animal" means an animal that is or reasonably appears to have been deserted by its owner or keeper. The term may include an animal that is running loose on property other than that of its owner or the owner's agent if the animal bears no identification indicating the owner or the owner's agent and the owner or owner's agent is not known to the sheriff, police officer, licensed veterinarian, or investigator taking custody of the animal under this chapter.
2. "Adequate care" means normal and prudent attention to the needs of an animal, including wholesome food, clean water, shelter, and health care, as necessary to maintain good health in a specific species of animal.
3. "Animal" includes every living animal except the human race.
- ~~3-~~ 4. "Commissioner" means the agriculture commissioner.
4. 5. "Cruelty" or "torture" ~~includes every~~ means any act, omission, or neglect whereby unnecessary or unjustifiable pain, suffering, or death is caused or permitted. The term does not include:
  - a. Any activity that requires a license or permit under chapter 20.1-03;
  - b. Any activity that is usual and customary practice in production agriculture;
  - c. Any scientific research conducted at a public or private facility or laboratory by or under the direction of a qualified researcher;
  - d. Any show, fair, competition, performance, or parade;
  - e. A rodeo;
  - f. A wagon or buggy ride;
  - g. Trail or pleasure riding; or

h. Any activity that involves the training or teaching of animals.

- 5- 6. "Investigator" means any person approved by the board to determine whether there has been a violation of this chapter.

**SECTION 2. AMENDMENT.** Section 36-21.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**36-21.1-02. Overworking, mistreating, or abandoning animals.**

1. No person may overdrive, overload, torture, cruelly beat, neglect, or unjustifiably injure, maim, mutilate, or kill any animal, or cruelly work any animal when unfit for labor.
2. No person may deprive any animal over which the person has charge or control of necessary food, water, or shelter.
3. No person may keep any animal in any ~~enclosure~~ building, room, cage, or pen without ~~exercise and wholesome change of air~~ adequate care.
4. No person may abandon any animal.
5. A person shall reclaim an animal within forty-eight hours of the agreed-upon time for termination of a boarding contract and pay all charges for boarding the animal.
6. No person may allow any maimed, sick, infirm, or disabled animal of which the person is the owner, or of which the person has custody, to lie in any street, road, or other public place for more than three hours after notice.
7. No person may willfully instigate, or in any way further, any act of cruelty to any animal or animals, or any act tending to produce such cruelty.
8. No person may cage any animal for public display purposes unless the display cage is constructed of solid material on three sides to protect the caged animal from the elements, and unless the horizontal dimension of each side of the cage is at least four times the length of the caged animal. This subsection does not apply to the North Dakota state fair association, to agricultural fair associations, to any agricultural display of caged animals by any political subdivision, or to district, regional, or national educational livestock or poultry exhibitions. Zoos which have been approved by the health district or the governing body of the political subdivision which has jurisdiction over the zoos are exempt from this subsection.

Approved April 10, 2007  
Filed April 11, 2007

# MILITARY

## CHAPTER 304

### SENATE BILL NO. 2115

(Government and Veterans Affairs Committee)  
(At the request of the Adjutant General)

## NATIONAL GUARD TRAINING AND COMPENSATION

AN ACT to amend and reenact sections 37-01-04, 37-07.2-01, 37-28-01, 37-28-02, and 37-28-03 of the North Dakota Century Code, relating to the governor's authority to call out the national guard for training, national guard tuition grants, the definition of resident for military adjusted compensation, and the time period for filing claims; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 37-01-04 of the North Dakota Century Code is amended and reenacted as follows:

**37-01-04. Governor's authority to order out national guard - Reserve militia ordered out.** In case of insurrection, invasion, tumult, riot, breach of the peace, or imminent danger thereof, to provide a presence at state ceremonial events, ~~or~~ to provide assistance to political entities in search and rescue efforts or to respond to a potential natural or environmental hazard or nuisance, or to perform training activities, the governor may order into the active service of this state any part of the national guard that the governor may deem proper. When the national guard of this state, or a part thereof, is called forth under the Constitution of the United States and the laws of the United States, the governor shall order out for service the remaining troops or such part thereof as may be necessary. If the number of available troops is insufficient, the governor shall order out such part of the reserve militia as the governor may deem necessary.

**SECTION 2. AMENDMENT.** Section 37-07.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**37-07.2-01. National guard tuition grants - Terms of grants.** Any qualifying member of the national guard who enrolls in ~~any private nonprofit college or university~~ an accredited postsecondary institution in North Dakota ~~granting a four-year baccalaureate degree~~ may, subject to the limitations of available appropriated funds and subject to national guard rules ~~promulgated~~ adopted by the adjutant general, receive a grant in an amount equal to the payments made pursuant to chapter 37-07.1 for similar courses and credit hours for each qualifying member of the national guard who is enrolled at the university of North Dakota. Any ~~private nonprofit college or university~~ accredited postsecondary institution that agrees to participate in such a program must waive twenty-five percent of the tuition for qualifying national guardsmen ~~in an amount equal to the difference between the tuition grant received by the national guard member and the tuition charged for similar courses and credit hours at the university of North Dakota.~~ The use of the grant may not be restricted to the payment of tuition fees by the member of the national guard. These grants must be distributed according to rules promulgated by

the adjutant general and are available only so long as the member maintains satisfactory performance with the guard, meets the qualification requirements of the rules, and pursues a course of study which satisfies the normal requirements of the school. As used in this chapter, the word "tuition" has the same meaning as provided in section 37-07.1-02.

**SECTION 3. AMENDMENT.** Section 37-28-01 of the North Dakota Century Code is amended and reenacted as follows:

**37-28-01. Statement of public purpose.** In order to ease the financial hardships and personal and family sacrifice sustained by ~~those North Dakota~~ members of the North Dakota national guard, and North Dakota residents of the reserve, and active duty component who were mobilized after December 5, 1992, in support of military operations around the world it is the intent of the legislative assembly that additional compensation be provided to those resident veterans of North Dakota and payment of that compensation is declared to be a public purpose. It is the further intent of the legislative assembly to encourage those North Dakota resident veterans to continue their voluntary membership in the national guard, reserve component, and active military force.

**SECTION 4. AMENDMENT.** Section 37-28-02 of the North Dakota Century Code is amended and reenacted as follows:

**37-28-02. Definitions.** As used in this chapter:

1. "Adjutant general" means the adjutant general of North Dakota.
2. "Beneficiary" in relation to a deceased veteran, means, in the order named:
  - a. The surviving unmarried husband or wife as of the date of signing the application;
  - b. The surviving child or children and the lawful issue of a deceased child or children by right of representation;
  - c. The surviving person standing in loco parentis; or
  - d. The surviving parent or parents.
3. "Domestic service" means service by a veteran during the period of service which is not foreign service.
4. "Foreign service" means service by a veteran after December 5, 1992, for which the veteran received an armed forces expeditionary medal or campaign badge.
5. "Honorable and faithful" means service evidenced by:
  - a. An honorable discharge, or its equivalent;
  - b. In the case of an officer, a certificate of service; and
  - c. In the case of a veteran who has not been discharged, a certificate from the appropriate service authority that the veteran's service was honorable and faithful.



6. "Period of service" means the period of time beginning December 5, 1992, and ending June 30, ~~2007~~ 2009.
7. "Resident" means a person who has filed a North Dakota income tax return for the year prior to making application for benefits under this section and who:
- a. Was born in and lived in the state of North Dakota until entrance into the armed forces of the United States;
  - b. Was born in, but was temporarily living outside the state of North Dakota, not having abandoned North Dakota residence at the time of entrance into the armed forces of the United States; or
  - c. Was born elsewhere but had resided within the state of North Dakota for the last six months before entrance into military service and had prior to or during that six-month period:
    - (1) Voted in the state of North Dakota;
    - (2) Was an emancipated minor during such period of residence or had lived with a parent or person standing in loco parentis who was a resident; or
    - (3) Was not registered for voting in another state after being a resident.
- d. a. "Resident" ~~also~~ means a veteran who was a bona fide resident of the state of North Dakota at the time of ~~entering the armed forces mobilization or, in the case of an active component member, at the time of deployment for which the member received an expeditionary medal or campaign badge, as determined under the rules of the adjutant general and the laws of this state. "Resident" includes all mobilized members of the North Dakota national guard.~~
- b. "Veteran" means a member of the national guard or reserve component who was activated under 10 U.S.C. 12302 and who completed honorable and faithful service of more than thirty days on active duty in the armed forces of the United States at any time during the period of service, or active component member awarded the expeditionary medal or campaign badge for service after December 5, 1992, who was a resident of the state of North Dakota, and who has not received bonus or adjusted compensation from another state for the period of service.

**SECTION 5. AMENDMENT.** Section 37-28-03 of the North Dakota Century Code is amended and reenacted as follows:

**37-28-03. Payment of adjusted compensation for domestic and foreign service.** Each national guard or reserve component resident veteran mobilized stateside is entitled to fifty dollars for each month or major fraction thereof for domestic service, not to exceed nine hundred dollars. Each national guard, reserve, or active component resident veteran of foreign service who received the expeditionary medal or campaign badge is entitled to one hundred dollars for each month or major fraction thereof, not to exceed one thousand eight hundred dollars.

Combined totals for stateside and foreign service may not exceed one thousand eight hundred dollars. If the veteran received a purple heart for foreign service, the veteran is entitled to a payment of two thousand five hundred dollars in lieu of monthly payments for adjusted compensation. If the veteran is deceased, the veteran's beneficiary is entitled to any payments under this chapter to which the veteran would have been entitled. Applications for adjusted compensation may be filed with the adjutant general through June 30, ~~2007~~ 2009, or in the case of a soldier mobilized on June 30, ~~2007~~ 2009, not later than six months after the end of the mobilization period of service.

**SECTION 6. EMERGENCY.** Sections 3, 4, and 5 of this Act are declared to be an emergency measure.

Approved April 9, 2007  
Filed April 10, 2007

**CHAPTER 305****SENATE BILL NO. 2353**

(Senators Dever, Lyson, Tollefson)  
(Representatives Carlisle, Karls, L. Meier)

**VETERANS AND VETERANS' PREFERENCES**

AN ACT to amend and reenact sections 37-01-40, 37-19.1-01, and 37-19.1-02 and subsection 1 of section 37-19.1-04 of the North Dakota Century Code, relating to veterans and veterans' preferences.

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

**SECTION 1. AMENDMENT.** Section 37-01-40 of the North Dakota Century Code is amended and reenacted as follows:

**37-01-40. Veteran and wartime veteran defined - Uniform service dates for wartime veterans.**

1. A "veteran" is a ~~person~~ an individual who has served on continuous federalized active military duty for ~~twenty-four months~~ one hundred eighty days or the full period for which the ~~person~~ individual was called or ordered to active military duty, ~~whichever is shorter~~ for reasons other than training, 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~~ individual a veteran.
2. A "wartime veteran" is a ~~person~~ an individual who served in the active military forces, during a period of ~~war~~ armed conflict 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~~ an individual who died in the line of duty in the active military forces, as determined by the armed forces.
3. Period of service dates for a wartime veteran begins with the date of any declaration of war by the Congress of the United States or presidential proclamation beginning hostilities 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 and dates determined by the United States department of defense.
4. Current uniform period of service dates for periods of armed conflict include:

- a. The period beginning December 7, 1941, through December 31, 1946, known as world war II;
  - b. The period beginning June 27, 1950, through January 31, 1955, known as the Korean war;
  - c. The period beginning August 5, 1964, through May 7, 1975, known as the Vietnam war;
  - d. The period beginning August 2, 1990, through January 2, 1992, known as the gulf war; and
  - e. The period beginning September 11, 2001, and ending on a date prescribed by presidential proclamation or by Congress as the last day of operation Iraqi freedom or operation enduring freedom, whichever occurs later.
5. The department of veterans affairs shall maintain a list of all period of service dates for emergency conditions in which the armed forces expeditionary medal has been awarded.

**SECTION 2. AMENDMENT.** Section 37-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**37-19.1-01. Definitions.** As used in this chapter:

1. "Agency" or "governmental agency" means all political subdivisions and any state agency, board, bureau, commission, department, officer, and any state institution or enterprise authorized to employ ~~persons~~ individuals either temporarily or permanently.
2. "Chief deputy" means the ~~person~~ individual who is appointed by an elected or appointed official under express statutory authority to hire a chief deputy and who is authorized to act on behalf of that official. The term does not include a ~~person~~ an individual appointed to a position that must be filled under ~~an established~~ a personnel system.
3. "Disabled veteran" means a veteran who is found to be entitled to a service-connected disability rating as determined by the United States veterans' administration.
4. "Justifiable cause" means grounds for action that are in accord with sufficient reason that can be justified or defended as correct. Justifiable cause not to hire a veteran must be something specific to that individual which renders the individual unsuitable for the position.
5. "Personnel system" means a ~~personnel system based on merit principles~~ system that rates applicants for a position using an objective set of skills, knowledge, abilities, behaviors, or other characteristics required for the position.
6. "Political subdivision" means counties, cities, townships, and any other governmental entity created by state law which employs ~~persons~~ individuals either temporarily or permanently.

- 6- 7. "Private secretary" means the ~~person~~ individual who is appointed by an elected or appointed official under express legal authority to hire a private secretary or administrative assistant and who is authorized to handle correspondence, keep files, schedule appointments, and do other clerical work of a more personal and confidential nature for that official, but does not include a ~~person~~ an individual appointed to a position that must be filled under ~~an established~~ a personnel system.
- 7- 8. "Veteran" means a North Dakota resident who is a wartime veteran as defined in subsection 2 of section 37-01-40.

**SECTION 3. AMENDMENT.** Section 37-19.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**37-19.1-02. Public employment preference to veterans - Residency requirements.**

1. Veterans are entitled to preference, over all other applicants, in appointment or employment by governmental agencies, provided that such veteran is a United States citizen at the time of application for employment. Veterans qualified for preference may not be disqualified from holding any position with an agency because of physical or mental disability, unless the disability renders them unable to properly perform the duties of the position applied for.
2. When a veteran applies for appointment or employment under subsection 1, the officer, board, or person whose duty it is to appoint or employ a ~~person~~ an individual to fill the available position shall, except where the veteran has been qualified for the position applied for under a personnel system, investigate the qualifications of the veteran. If the veteran is found to possess the qualifications required for the position applied for, whether educational or by way of prior experience, and is physically and mentally able to perform the duties of the position applied for, the officer, board, or person shall appoint or employ the veteran.
3. A disabled veteran is entitled to a preference superior to that given other veterans under this section, which preference must be accorded in the manner provided in this section.
4. Notwithstanding the preference provisions in subsections 1, 2, and 3, public employment preference for veterans by agencies ~~of governmental agencies, as defined herein, which now have, or which may hereafter have, an established~~ filling positions through a personnel system are governed by the following:
  - a. No distinction or discrimination may be made in the administration of the examination because the applicant may be a veteran.
  - b. Upon completion of the examination with a passing grade, the applicant must be informed of a veteran's rights to employment preference as hereinafter provided.
  - c. The applicant must be required to furnish proof of the applicant's status as a veteran and, if disabled, proof of the applicant's disability, as defined herein.

- d. Upon receipt of proof required in subdivision c, on a one hundred point scale, the examiner shall add five points for a nondisabled veteran and ten points for a disabled veteran to the examination grade of the applicant; ~~and the~~. The total is the veteran's examination grade score.
  - e. Upon request for the prescribed number of eligible ~~persons~~ individuals from the eligibility registry, ~~such the~~ number of eligible ~~persons~~ individuals must be certified from the top number of eligible ~~persons~~ individuals and with ~~such the~~ certified list of eligible ~~persons~~ individuals there must also be submitted a statement as to which of those so certified are veterans, disabled veterans, or nonveterans.
  - f. ~~In the event~~ If the certified list of eligible ~~persons~~ individuals includes either veterans or disabled veterans, the appointing or employing authority of that particular agency or governmental agency shall make a selection for the available position as follows:
    - (1) A disabled veteran, without regard to the disabled veteran's examination grade, is first entitled to the position and, in the absence of justifiable cause, documented in writing, for not making ~~such that~~ selection, must be so appointed or employed. If ~~such the~~ list includes two or more disabled veterans, then the one with the highest examination grade is first entitled to the position and, in the absence of justifiable cause, documented in writing, for not making ~~such that~~ selection, must be so appointed or employed.
    - (2) ~~When such~~ If the certified list of eligible ~~persons~~ individuals does not include one or more disabled veterans and consists only of veterans, then the one with the highest examination grade is first entitled to the position and, in the absence of justifiable cause, documented in writing, must be ~~so~~ appointed or employed.
    - (3) ~~When such~~ If the certified list of eligible ~~persons~~ individuals includes nonveterans and veterans, but not disabled veterans, then the one with the highest examination grade, whether a nonveteran or a veteran, is first entitled to the position and, in the absence of justifiable cause, must be so appointed or employed; and if the one with the highest examination grade is a veteran and is not appointed or employed, there must be justifiable cause documented in writing for not making ~~such that~~ appointment or employment.
5. ~~The provisions of this~~ This section ~~de~~ does not apply when the position to be filled is that of a superintendent of schools, teacher, or the chief deputy or private secretary of an elected or appointed official, the chancellor and vice chancellors of the board of higher education, presidents or executive deans, vice presidents, assistant to the president, provosts, and instructors of board institutions. Temporary committees and individual or group appointments made by the governor or legislative assembly are also excepted from the provisions of this section.

**SECTION 4. AMENDMENT.** Subsection 1 of section 37-19.1-04 of the North Dakota Century Code is amended and reenacted as follows:

1. If a veteran, or a qualified veteran's spouse, hereafter known as the applicant, is not given the preference provided in section 37-19.1-02 or 37-19.1-03, the applicant, within fifteen days after notification by certified mail that employment has been refused, may request a hearing ~~before a hearing officer~~ as provided in subsection 3. The applicant's request must be in writing, must include the employer's notification that employment has been refused, and must be delivered to the commissioner of veterans' affairs by certified mail. A copy of the written request must be mailed to the employer or employing agency. The applicant is entitled to immediate employment in the position for which application was originally made, or an equivalent position, together with backpay and benefits from the date the appointment should have been made less amounts otherwise earnable through due diligence, if the hearing officer finds in favor of the applicant.

Approved May 4, 2007  
Filed May 4, 2007

## CHAPTER 306

### SENATE BILL NO. 2142

(Senators Nelson, Dever, Horne)  
(Representatives Amerman, Froseth, Schneider)

### VETERANS' AID FUND LOANS

AN ACT to amend and reenact sections 37-14-04, 37-14-06, and 37-14-07 of the North Dakota Century Code, relating to loans made from the veterans' aid fund.

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

**SECTION 1. AMENDMENT.** Section 37-14-04 of the North Dakota Century Code is amended and reenacted 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 and to a surviving spouse of a veteran if the spouse has not remarried. A qualified applicant may be permitted to receive more than one loan providing the ~~applicant has satisfied payment requirements of a previous loan~~ total amount of all loans does not exceed five thousand dollars.

**SECTION 2. AMENDMENT.** Section 37-14-06 of the North Dakota Century Code is amended and reenacted as follows:

**37-14-06. Department may provide aid.** If the department of veterans' affairs is satisfied that an applicant is a veteran or the surviving spouse of a veteran and has not remarried, and that the applicant is a citizen and resident of this state, and that the applicant meets the criteria set forth in rules adopted pursuant to section 37-14-10 regarding qualifications to obtain a loan, the department may loan to the applicant, ~~or a guardian of the applicant,~~ a sum from the veterans' aid fund not to exceed five thousand dollars. Additional loans may be made to an applicant if the applicant still meets the loan criteria and if the total of all loans does not exceed five thousand dollars. If an applicant is provided more than one loan, the amounts will be consolidated into one payment.

**SECTION 3. AMENDMENT.** Section 37-14-07 of the North Dakota Century Code is amended and reenacted as follows:

**37-14-07. Repayment to be made to aid fund.** Upon the granting of an application and at the time of disbursement, the applicant, or the applicant's ~~legally appointed guardian~~ legal agent, shall execute ~~an~~ a loan agreement with the department of veterans' affairs that within a specified period of not to exceed four years from the date of the receipt of the last item of the advancement, the applicant will repay to the state for the use of the veterans' aid fund the full amount of all advancements made to the applicant with interest as provided in rules adopted under section 37-14-10, but not to exceed ten percent annually. One-half of the interest must be waived if timely repayment is made to the fund as set forth in rules adopted pursuant to section 37-14-10. The department may take necessary legal action to collect, compromise, or settle loans if in the opinion of the department the person has the financial means to repay, and the person deliberately refuses to do so. The department may release from financial liability any person it determines is



financially unable to repay the loan through no fault of the person. The department may assess and collect a late payment penalty as provided in section 47-14-05.

Approved March 5, 2007

Filed March 6, 2007

**CHAPTER 307****HOUSE BILL NO. 1425**

(Representatives Metcalf, Haas, Kerzman, Klein, Nelson, Wieland)

**VETERANS' HOME OPERATING FUND  
EXPENDITURES**

AN ACT to amend and reenact section 37-15-14 of the North Dakota Century Code, relating to the veterans' home operating fund expenditures.

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

**SECTION 1. AMENDMENT.** Section 37-15-14 of the North Dakota Century Code is amended and reenacted as follows:

**37-15-14. Veterans' home operating fund - Moneys for the maintenance of the veterans' home to be deposited with state treasurer - General fund appropriation expenditures.** A special fund, to be known as the veterans' home operating fund, must 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~~ these 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, except as provided for in section 37-15-21, must be placed in the veterans' home operating fund for the use and maintenance of the veterans' home. ~~The general fund appropriation to the veterans' home may be expended only when federal or other funds are not available and upon the approval of the director of the office of management and budget.~~

Approved March 23, 2007  
Filed March 23, 2007

**CHAPTER 308****SENATE BILL NO. 2137**  
(Political Subdivisions Committee)  
(At the request of the Adjutant General)**EMERGENCY AND DISASTER RESPONSE  
ADMINISTRATION**

AN ACT to amend and reenact sections 37-17.1-02, 37-17.1-02.1, and 37-17.1-04, subsections 3 and 6 of section 37-17.1-06, subsections 3 and 4 of section 37-17.1-07, subsections 1 and 2 of section 37-17.1-07.1, subsection 3 of section 37-17.1-11, subsection 1 of section 37-17.1-12, section 37-17.1-13, subsections 2 and 4 of section 37-17.1-14.2, sections 37-17.1-19, 37-17.1-20, 37-17.1-21, and 37-17.1-24, subsections 1 and 3 of section 37-17.1-25, and section 57-15-28 of the North Dakota Century Code, relating to the department of emergency services and the North Dakota Disaster Act of 1985.

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

**SECTION 1. AMENDMENT.** Section 37-17.1-02 of the North Dakota Century Code is amended and reenacted 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 disasters or emergencies, threats to homeland security, or hostile military or paramilitary action.
2. Provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters or emergencies.
3. Clarify the roles of the governor, state agencies, and local governments in prevention of, in mitigation of, preparation for, ~~and~~ response to, and recovery from disasters or emergencies.
4. Authorize and provide for coordination of emergency management activities 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.
5. Provide for a statewide emergency management system embodying all aspects of prevention, mitigation, preparedness, response, and recovery and incorporating the principles of the national incident management system and its incident command system, as well as other applicable federal mandates.

**SECTION 2. AMENDMENT.** Section 37-17.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.1-02.1. Department of emergency services.** The department of emergency services consists of a division of state radio and a division of homeland security. The adjutant general is the director of the department. The adjutant general shall provide for shared administration of both divisions. The division of homeland security consists of the state emergency operations center section, the disaster recovery section, and the homeland security section. The adjutant general shall appoint a separate director of each division. A division director serves at the pleasure of the adjutant general. The adjutant general shall fix the compensation of a division director within limits of legislative appropriation.

**SECTION 3. AMENDMENT.** Section 37-17.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.1-04. Definitions.** As used in this chapter:

1. "Disaster" means the occurrence of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause, including fire, flood, earthquake, severe high and low temperatures, tornado storm, wave action, ~~or~~ chemical spill, or other water or air contamination, epidemic, 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 or emergency worker" means any person performing disaster or emergency 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.
3. "Emergency" means any situation that 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 prevent, 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.
5. "Homeland security" means a concerted national effort to prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism, and minimize the damage and recover from attacks in the United States.
6. "Incident command system" means a standardized on-scene incident management concept designated specifically to allow responders to adopt an integrated organizational structure equal to the complexity and demands of any single incident or multiple incidents without being hindered by jurisdictional boundaries.

7. "Mass care" means food, clothing, shelter, and other necessary and essential assistance provided to a large number of affected people in response to, or recovery from, a disaster or emergency.
8. "National incident management system" means a system that provides a consistent nationwide approach for federal, state, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents regardless of cause, size, or complexity.

**SECTION 4. AMENDMENT.** Subsections 3 and 6 of section 37-17.1-06 of the North Dakota Century Code are amended and reenacted as follows:

3. The division of homeland security shall ~~take an integral part in provide~~ provide technical assistance for the development and revision of local 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 local emergency management organizations. These personnel shall consult with local emergency management organizations on a regularly scheduled basis and shall make field examinations of the areas, circumstances, and conditions to which particular local disaster or emergency plans are intended to apply and may suggest or require revisions.~~
6. The division of homeland security, in coordination with lead and support agencies, shall:
  - a. Coordinate the procurement ~~and repositioning~~ of supplies, materials, and equipment ~~for~~ during disaster or emergency operations.
  - b. Provide guidance and standards for local disaster or emergency operational plans.
  - c. Periodically review local disaster or emergency operational plans.
  - d. Coordinate state or state and federal assistance to local emergency management organizations.
  - e. Establish and operate or assist local emergency management organizations to establish and operate training programs and programs for emergency public information.
  - 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 must be accorded full confidentiality and will be released only in aggregate form.
  - 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.

- h. Establish access to a register of persons with types of training and skills important in prevention, mitigation, preparedness, response, and recovery.
- i. Establish access to a register of equipment and facilities available for use in a disaster or emergency.
- j. Prepare, for issuance by the governor, executive orders, proclamations, and guidance as necessary or appropriate in managing a disaster or emergency.
- k. Coordinate and may enter agreements 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 mitigation, preparation, response, and recovery.
- 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 when no violation of criminal laws exists.~~
- m. Do other things necessary, incidental, or appropriate for the implementation of this chapter.

**SECTION 5. AMENDMENT.** Subsections 3 and 4 of section 37-17.1-07 of the North Dakota Century Code are amended and reenacted as follows:

3. Each city shall provide an emergency management organization of its own, or it shall participate in the countywide emergency management organization. Each governing board of a city shall make its determination on the basis of the city's emergency management requirements, hazards, capabilities, and resources. ~~The division of homeland security shall publish and keep current a list of cities desiring to have an emergency management organization of their own. If a city provides an emergency management organization of its own, the city and county shall coordinate the city and county emergency plans.~~
4. The mayor of or the president of the board of city commissioners in a city or with an emergency management organization and the chairman of the board of county commissioners shall notify the division of homeland security of the manner in which the city ~~or~~ and the county ~~is~~ are providing or securing emergency management activities, identify ~~the person each individual~~ who will coordinate the activities of the local emergency management organization, and furnish additional information relating thereto as the division requires.

**SECTION 6. AMENDMENT.** Subsections 1 and 2 of section 37-17.1-07.1 of the North Dakota Century Code are amended and reenacted as follows:

1. Program components.
  - a. The governor shall appoint members of the state emergency response commission to carry out the commission's responsibilities as outlined in Public Law 99-499, 42 U.S.C. 11001, et seq., also referred to as SARA title III, and the responsibilities of the

commission members as outlined in the North Dakota emergency operations plan.

- b. In conjunction with the state emergency response commission, the local emergency planning committees, as appointed by the boards of county commissioners, and the local emergency management organizations, ~~the division of homeland security~~ shall coordinate the development and maintenance of a state hazardous chemicals preparedness and response program.
- c. The director of the division of homeland security shall serve as the chairman of the state emergency response commission. In the absence of the chairman, the designated vice chairman shall serve as chairman. The state emergency response commission by vote will select the vice chairman to fulfill a two-year term. The chairman shall recognize the assignment of representatives to the commission who are designated through a delegation of authority by a member. The chairman shall designate a commission secretary, solely for the purpose of documenting and distributing clerical proceedings, from the staff of the division of homeland security.
- d. For the purpose of complying with the reporting requirements set forth in sections 302, 304, 311, 312, and 313 of Public Law 99-499, 42 U.S.C. 11001, et seq., also referred to as SARA title III, the owner and operator of any facility, as defined in SARA title III, shall submit those reports to the North Dakota division of homeland security as required by SARA title III, which shall establish and maintain the state repository for these reports.

## 2. Establishment of funds.

- a. There is created in the state treasury a nonlapsing restricted account to be known as a state hazardous chemicals preparedness and response fund. The fund consists of revenue collected from the state hazardous chemical fee system and funds appropriated by the general assembly. Moneys in the fund shall be appropriated biennially to the division of homeland security for carrying out the purposes, goals, and objectives of SARA title III, and the state hazardous chemicals preparedness and response program.
- b. The county treasurer of each county shall establish a nonlapsing restricted account, to be known as the county hazardous chemicals preparedness and response account. The county hazardous chemicals preparedness and response account consists of revenue from the state hazardous chemicals fee system, county, federal or state funds, grants, and any private donations provided to finance the county hazardous chemicals preparedness and response program.
- c. Each owner and operator of a facility, as defined in SARA title III, shall pay an annual hazardous chemicals fee to the division of homeland security by March first of each year. The fee is twenty-five dollars for each chemical within the meaning of 40 CFR 355.20 or its successor which is required under section 312 of

SARA title III, to be listed on the hazardous chemical inventory form (tier II) which the owner or operator must submit to the division. The federal requirements must be used for completing the tier II form, including the threshold amounts, as outlined in 40 CFR 370.20. The maximum fee for a facility under this section is one hundred fifty dollars. The division of homeland security shall transfer to the county hazardous chemicals preparedness and response account one-half of the funds collected from the state's hazardous chemicals fee system.

- d. The owners or operators of family farm enterprises that are not engaged in the retail or wholesale of hazardous chemicals and facilities owned by the state or local governments are exempt from the fee under subdivision c. For purposes of this section, the terms "family farm" and "farmer" have the same meaning as set forth in section 6-09.11-01.
- e. The state and county governments are authorized to accept and may deposit grants, gifts, and federal funds into the hazardous chemicals preparedness and response fund and accounts for the purpose of carrying out the hazardous chemicals preparedness and response ~~program~~ programs to include training, exercising, equipment, response, and salaries.
- f. "Hazardous chemical" means as defined in 40 CFR 355.20 and 29 CFR 1910.1200.
- g. The state hazardous chemicals fee system does not supersede a city fee system for hazardous chemicals.

**SECTION 7. AMENDMENT.** Subsection 3 of section 37-17.1-11 of the North Dakota Century Code is amended and reenacted as follows:

3. If the division of homeland security determines, in coordination with lead and support agencies, on the basis of the studies or other competent evidence, that an area is susceptible to a disaster of catastrophic proportions without adequate warning; 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 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 determination, finds after public hearing, that the changes are essential, the governor shall so recommend to the agencies or local governments with jurisdiction over that area and subject matter. If no action or insufficient action pursuant to the governor's recommendations is taken within the time specified by the governor, the governor shall so inform the legislative assembly and request legislative action appropriate to mitigate the impact of the disaster or emergency.

**SECTION 8. AMENDMENT.** Subsection 1 of section 37-17.1-12 of the North Dakota Century Code is amended and reenacted as follows:

1. Persons within this state shall conduct themselves and keep and manage their affairs and property in ways that will reasonably assist and



will not unreasonably detract from the ability of the state and the public to effectively prevent, 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 must 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 that person's services or property without compensation.

**SECTION 9. AMENDMENT.** Section 37-17.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.1-13. Communications.** The ~~division of homeland security department of emergency services~~ shall ascertain what means exist for rapid and efficient communications in times of a disaster or emergency. The ~~division department~~ shall consider the desirability of supplementing these communications resources or of integrating them into a comprehensive state or 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 department~~ shall evaluate the possibility of multipurpose use thereof for general state and local governmental purposes. The ~~division department~~ shall make recommendations to the governor as appropriate.

**SECTION 10. AMENDMENT.** Subsections 2 and 4 of section 37-17.1-14.2 of the North Dakota Century Code are amended and reenacted as follows:

2. The governor may enter into an interstate agreement with any state if the governor finds that joint action with that state is desirable in meeting common intergovernmental problems of emergency or disaster prevention, preparedness, mitigation, response, and recovery.
4. All interstate mutual aid compacts and other interstate agreements to which this state is a party dealing with disaster or emergency prevention, preparedness, response, recovery, or mitigation must be reviewed and made current every four years.

**SECTION 11. AMENDMENT.** Section 37-17.1-19 of the North Dakota Century Code is amended and reenacted 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~~ 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 disaster or emergency ~~in those cases when 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 is 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 county or city of the state.
2. To assist any 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 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 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 12. AMENDMENT.** Section 37-17.1-20 of the North Dakota Century Code is amended and reenacted 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. 443], the~~ 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 presidentially declared "major disaster", a program of community disaster loans in those cases when communities are unable to meet or provide for 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 disaster and has demonstrated a need for financial assistance to perform its governmental functions, the governor may apply to the federal government, on behalf of the local government, for a loan and receive and disburse the proceeds of any approved loan to any applicant local government.

The governor may:

1. Determine the amount needed by any applicant local government to restore or resume its governmental functions and certify the same to the federal government. No application amount may exceed twenty-five percent of the annual operating budget of the applicant for the fiscal year in which the disaster occurs.
2. Recommend to the federal government, based upon the governor's review, the cancellation of all or any part of repayment when, within three fiscal years following the disaster, the revenues of the local government are insufficient to meet its operating expenses, including additional disaster-related expenses of a county or city.

**SECTION 13. AMENDMENT.** Section 37-17.1-21 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.1-21. Debris and wreckage removal in disasters or emergencies.** ~~In accordance with the provisions of the United States Disaster Relief Act of 1974 [Pub. L. 93-288; 88 Stat. 443], the~~ 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 disaster ~~in these cases when 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 is 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.
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 may not be exercised, except upon state-owned lands, unless the affected local government, corporation, limited liability company, organization, or individual first presents 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, first agrees to indemnify the state government against any claim arising from such removal.

Whenever the governor provides for clearance of debris or wreckage pursuant to subsection 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 is not liable for death of or injury to persons or damage to property.

The governor shall establish guidelines to carry out the purposes of sections 37-17.1-19, 37-17.1-20, and 37-17.1-21.

**SECTION 14. AMENDMENT.** Section 37-17.1-24 of the North Dakota Century Code is amended and reenacted as follows:

**37-17.1-24. Definitions.** In this section and section 37-17.1-25, unless the context otherwise requires:

1. "Assisting unit" means an emergency response unit that renders mutual aid assistance to a requesting unit.
2. "Emergency response unit" includes a fire department, law enforcement agency, emergency medical services operation, and any other public, tribal, and private group that responds to a request for assistance at the scene of an incident.
3. "Incident" means any situation that requires actions to immediately protect lives and property, to provide for public health and safety, or to avert or lessen the threat of a disaster.

4. "Incident command system" means a recognized system adopted by the United States department of homeland security and the division of emergency management for the command, control, and coordination of resources and personnel at the scene of an incident standardized, on-scene incident management concept designed specifically to allow responders to adopt an integrated organizational structure equal to the complexity and demands of any single incident or multiple incidents without being hindered by jurisdictional boundaries.
5. "National incident management system" means a system that provides a consistent nationwide approach for federal, state, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents, regardless of cause, size, or complexity.
6. "National response plan" means a comprehensive all-hazards approach to enhance the ability of the United States to manage domestic incidents, incorporating best practices and procedures from incident management disciplines and integrating them into a unified structure to guide national support of state and local governments and the private sector.
7. "Requesting unit" means the emergency response unit with responsibility for responding to an incident which seeks mutual aid assistance from another emergency response unit.

**SECTION 15. AMENDMENT.** Subsections 1 and 3 of section 37-17.1-25 of the North Dakota Century Code are amended and reenacted as follows:

1. An incident ~~command system~~ commander must be designated by the requesting unit, and the incident command system must be used. The incident commander may request mutual aid and is responsible for all resources assigned to or responding to an incident.
3. All resources assigned to an incident are under the ~~command~~ operational control of the incident commander. The individual in charge of an assisting unit may retain the ability to withdraw personnel or resources upon notification to the incident commander. An assisting unit withdrawing from an emergency response operation is not liable for damage to the requesting unit.

**SECTION 16. AMENDMENT.** Section 57-15-28 of the North Dakota Century Code is amended and reenacted 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 may not be considered in determining the budget or the amount to be levied for each fiscal year for normal tax purposes but must be shown in the budget as an "emergency fund" and may 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, must be deposited in the emergency fund, and must 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 may not be used for any road construction or

maintenance, except for repair of roads damaged by nature within sixty days preceding ~~such~~ the determination to expend emergency funds, or for the purchase of road equipment; however, the emergency fund may be used to match federal funds appropriated to mitigate damage to roads related to a federally declared disaster that occurred more than sixty days preceding the determination. Any unexpended balance, remaining in the emergency fund at the end of any fiscal year, must be kept in ~~such~~ the fund. When the amount of money in the emergency fund, plus the amount of money due the fund from outstanding taxes, 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 must be discontinued, and no further levy may be made until required to replenish the emergency fund.

Approved May 2, 2007

Filed May 3, 2007

**CHAPTER 309****HOUSE BILL NO. 1291**

(Representatives Price, Belter, DeKrey)  
(Senators Hacker, Krebsbach, Oehlke)

**VETERAN'S DEATH BENEFIT**

AN ACT to amend and reenact section 37-28-04 of the North Dakota Century Code, relating to the death benefit for veterans; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 37-28-04 of the North Dakota Century Code is amended and reenacted as follows:

**37-28-04. Payment to beneficiary of veteran who died in active service.**

In the case of a veteran who died as a result of active service during the period of service, the beneficiary of ~~such~~ the veteran is entitled to a payment of ~~two~~ five thousand ~~five hundred~~ dollars in lieu of any other compensation under this chapter.

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

Approved March 12, 2007  
Filed March 13, 2007

# MINING AND GAS AND OIL PRODUCTION

## CHAPTER 310

### HOUSE BILL NO. 1511

(Representatives S. Meyer, Drovdal, Keiser, Onstad)  
(Senator Heitkamp)

## OIL AND GAS WELL BONDING REQUIREMENTS

AN ACT to create and enact a new subdivision to subsection 1 of section 38-08-04 of the North Dakota Century Code, relating to bonding requirements for idle oil and gas wells.

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

**SECTION 1. AMENDMENT.** A new subdivision to subsection 1 of section 38-08-04 of the North Dakota Century Code is created and enacted as follows:

The placing of wells in abandoned-well status which have not produced oil or natural gas in paying quantities for one year. A well in abandoned-well status must be promptly returned to production in paying quantities, approved by the commission for temporarily abandoned status, or plugged and reclaimed within six months. If none of the three preceding conditions are met, the industrial commission may require the well to be placed immediately on a single-well bond in an amount equal to the cost of plugging the well and reclaiming the well site. In setting the bond amount, the commission shall use information from recent plugging and reclamation operations. After a well has been in abandoned-well status for one year, the well's equipment, all well-related equipment at the well site, and salable oil at the well site are subject to forfeiture by the commission. If the commission exercises this authority, section 38-08-04.9 applies. After a well has been in abandoned-well status for one year, the single-well bond referred to above, or any other bond covering the well if the single-well bond has not been obtained, is subject to forfeiture by the commission.

Approved March 29, 2007  
Filed March 28, 2007

**CHAPTER 311****HOUSE BILL NO. 1229**

(Representatives Drovdal, Kempenich)  
(Senators Bowman, Urlacher, Wardner)

**OIL AND GAS WELL LOCATION RESTRICTIONS**

AN ACT to amend and reenact section 38-08-05 of the North Dakota Century Code, relating to oil and gas well location restrictions.

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

**SECTION 1. AMENDMENT.** Section 38-08-05 of the North Dakota Century Code is amended and reenacted as follows:

**38-08-05. Drilling permit required.** It is unlawful to commence operations for the drilling of a well for oil or gas without first obtaining a permit from the industrial commission under such rules as may be prescribed by the commission and paying to the commission a fee for each such well in an amount to be prescribed by the commission. The applicant shall provide notice to the owner of any permanently occupied dwelling located within one-quarter mile [402.34 meters ] of the proposed oil or gas well. Unless waived by the owner or if the commission determines that the well location is reasonably necessary to prevent waste or to protect correlative rights, the commission may not issue a drilling permit for an oil or gas well that will be located within five hundred feet [152.4 meters] of an occupied dwelling. If the commission issues a drilling permit for a location within five hundred feet [152.4 meters] of an occupied dwelling, the commission may impose such conditions on the permit as the commission determines reasonably necessary to minimize impact to the owner of the dwelling.

Approved April 9, 2007  
Filed April 10, 2007



## CHAPTER 312

### HOUSE BILL NO. 1048

(Representatives Drovdal, Hatlestad, S. Meyer)

(Senators Tollefson, Urlacher)

## UNLOCATABLE MINERAL INTEREST TRUSTS

AN ACT to create and enact chapter 38-13.1 of the North Dakota Century Code, relating to trusts for unlocatable mineral, leasehold, and royalty interest owners; and to repeal chapter 38-13 of the North Dakota Century Code, relating to execution of oil and gas instruments affecting interests owned by absent persons.

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

**SECTION 1.** Chapter 38-13.1 of the North Dakota Century Code is created and enacted as follows:

**38-13.1-01. Trusts for unlocatable mineral, leasehold, or royalty interest owners - Creation.** A person that owns a mineral, leasehold, or royalty interest underlying a tract of land may petition the district court of the county in which the tract or a portion of the tract is located to declare a trust in favor of other persons also owning or claiming an interest in the mineral, leasehold, or royalty interest underlying the tract if the place of residence and present whereabouts of the other persons are unknown and cannot reasonably be ascertained. In requesting the appointment of a trustee, the petitioner must show that a diligent but unsuccessful effort to locate the absent owner or claimant has been made and that appointment of a trustee will be in the best interest of all owners of an interest in the mineral, leasehold, or royalty interest. After determining that these conditions have been met, the court shall appoint the county treasurer as trustee and shall authorize the county treasurer to execute and deliver an oil, gas, or other mineral lease, a ratification, a division order, or any other related document or instrument on the terms and the conditions as the court may approve. A trust in existence on the effective date of this Act may be transferred to the county treasurer of the county in which the mineral, leasehold, or royalty interest is located.

**38-13.1-02. No further liability for petitioner.** If a trust in favor of unlocatable owners or claimants of an interest the mineral, leasehold, or royalty interest has been created and all bonuses, rental payments, royalties, and other income due to the unlocatable owners being or have been paid to the trustee, the person petitioning for creation of the trust is not liable for further claims by unlocatable owners for bonuses, rental payments, royalties, and other income produced after the creation of the trust.

**38-13.1-03. Administration of trust.** The administration of the trust must comply with the appropriate provisions regulating trusts contained in title 59. Except as provided in this section, trustee or attorney's fees may not be paid from the trust proceeds. All bonuses, rental payments, royalties, and other income must be paid to the trustee until the trust is terminated and notice of its termination is given to all interested parties. The trustee shall distribute all moneys held in the trust to the person entitled to the money upon the order of the district court. A trust in favor of unlocatable owners must be kept in force until the unlocatable owners of the mineral interests in question have successfully claimed their share of the funds held in trust

and have filed the notice as provided in section 38-13.1-04. The creation of a trust in favor of unlocatable owners does not affect the right of a surface owner who succeeds to ownership of a mineral interest upon its lapse under chapter 38-18.1. A person who succeeds to ownership under chapter 38-18.1 owns the mineral interest and the proceeds from the mineral interest from the date of succession. The trustee shall invest funds in a prudent manner. Upon receipt, fifty percent of the moneys paid to the trustee must be credited to the general fund of the county in which the mineral interest is located to defray the costs of administration. Funds held in trust are subject to the laws governing abandoned property as provided in chapter 47-30.1.

**38-13.1-04. Filing of addresses - Fee.** A person claiming an interest in the mineral, leasehold, or royalty interest underlying a tract of land that is the subject of a trust proceeding under section 38-13.1-01 may record with the recorder of each county in which the land is located a notice containing the person's address and a description of the person's mineral, leasehold, or royalty interest. Recording the notice creates a rebuttable presumption that the person owns the interest claimed.

**SECTION 2. REPEAL.** Chapter 38-13 of the North Dakota Century Code is repealed.

Approved March 2, 2007

Filed March 2, 2007

**CHAPTER 313****HOUSE BILL NO. 1045**

(Representatives Drovdal, Kempenich)  
(Senators Bowman, Lyson)

**ABANDONED MINERAL SUCCESSION STATEMENTS**

AN ACT to create and enact a new subsection to section 11-18-03 and a new subsection to section 38-18.1-06 of the North Dakota Century Code, relating to filing of a statement of succession in interest to abandoned minerals; and to amend and reenact section 38-18.1-02 of the North Dakota Century Code, relating to filing of a statement of succession in interest to abandoned minerals.

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

**SECTION 1.** A new subsection to section 11-18-03 of the North Dakota Century Code is created and enacted as follows:

A statement of succession in interest to minerals deemed to be abandoned under chapter 38-18.1.

**SECTION 2. AMENDMENT.** Section 38-18.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**38-18.1-02. Statement of claims - Recording - Reversion.** Any mineral interest is, if unused for a period of twenty years immediately preceding the first publication of the notice required by section 38-18.1-06, deemed to be abandoned, unless a statement of claim is recorded in accordance with section 38-18.1-04. Title to the abandoned mineral interest vests in the owner or owners of the surface estate in the land in or under which the mineral interest is located on the date of abandonment. The owner of the surface estate in the land in or under which the mineral interest is located on the date of abandonment may record a statement of succession in interest indicating that the owner has succeeded to ownership of the minerals under this chapter.

**SECTION 3.** A new subsection to section 38-18.1-06 of the North Dakota Century Code is created and enacted as follows:

A person who succeeds to the ownership of a mineral interest upon its lapse under this chapter is entitled to record a statement of succession in interest indicating that that person has succeeded to the ownership of the mineral interest.

Approved March 2, 2007  
Filed March 2, 2007

**CHAPTER 314****HOUSE BILL NO. 1060**

(Natural Resources Committee)

(At the request of the Industrial Commission)

**MINERAL EXPLORATION AND GEOLOGIC DATA FUNDS**

AN ACT to create and enact chapter 38-21 and a new section to chapter 54-17.4 of the North Dakota Century Code, relating to creation of the geophysical, geothermal, subsurface minerals, and coal exploration and geologic data preservation funds; to amend and reenact sections 38-08-04.4, 38-08-04.5, and 38-19-04 and subsection 5 of section 54-44.4-02 of the North Dakota Century Code, relating to oil well plugging contracts, the oil and gas well plugging and site reclamation fund, geothermal energy extraction permits, and exemptions from procurement practices; to provide a continuing appropriation; to provide for a report to the budget section; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 38-08-04.4 of the North Dakota Century Code is amended and reenacted as follows:

**38-08-04.4. Commission authorized to enter into contracts.** The commission is hereby authorized to enter into public and private contractual agreements for the plugging or replugging of oil and gas or injection wells, the removal or repair of related equipment, and the reclamation of abandoned oil and gas or injection well sites if any of the following apply:

1. The person or company drilling or operating the well or equipment cannot be found, has no assets with which to properly plug or replug the well or reclaim the well site, or cannot be legally required to plug or replug the well or to reclaim the well site.
2. There is no ~~surety~~ bond covering the well to be plugged or the site to be reclaimed or there is a ~~forfeited surety~~ bond but the cost of plugging or replugging the well or reclaiming the site exceeds the amount of the bond.
3. The well or equipment is leaking or likely to leak oil, gas, or saltwater or is likely to cause a serious threat of pollution or injury to the public health or safety.

Reclamation work must be limited to abandoned drilling and production sites, saltwater disposal pits, drilling fluid pits, and access roads. Sealed bids for any well plugging or reclamation work under this section must be solicited by placing a notice in the official county newspaper of the county in which the work is to be done and in such other newspapers of general circulation in the area as the commission may deem appropriate. Bids must be addressed to the commission and must be opened publicly at ~~an industrial commission meeting~~ the time and place designated in the notice. The contract must be let to the lowest responsible bidder, but the commission

may reject any or all bids submitted. If a well or equipment is leaking or likely to leak oil, gas, or saltwater or is likely to cause a serious threat of pollution or injury to the public health or safety, the commission, without notice or the letting of bids, may enter into contracts necessary to ~~plug or replug such wells under such rules as the commission may prescribe~~ mitigate the problem.

The contracts for the plugging or replugging of wells or the reclamation of well sites must be on terms and conditions as prescribed by the commission, but at a minimum the contracts shall require the plugging and reclamation to comply with all statutes and rules governing the plugging of wells and reclamation of well sites.

**SECTION 2. AMENDMENT.** Section 38-08-04.5 of the North Dakota Century Code is amended and reenacted as follows:

**38-08-04.5. Abandoned oil and gas well plugging and site reclamation fund.** There is hereby created an abandoned oil and gas well plugging and site reclamation fund.

1. Revenue to the fund must include:
  - a. Fees collected by the oil and gas division of the industrial commission for permits or other services.
  - b. Moneys received from the forfeiture of drilling and reclamation bonds.
  - c. Moneys received from any federal agency for the purpose of this section.
  - d. Moneys donated to the commission for the purposes of this section.
  - e. Moneys received from the state's oil and gas impact fund.
  - f. Moneys recovered under the provisions of section 38-08-04.8.
  - g. Moneys recovered from the sale of equipment and oil confiscated under section 38-08-04.9.
  - h. Moneys transferred from the cash bond fund under section 38-08-04.11.
  - i. Such other moneys as may be deposited in the fund for use in carrying out the purposes of plugging or replugging of wells or the restoration of well sites.
2. Moneys in the fund may be used for the following purposes:
  - a. Contracting for the plugging of abandoned wells.
  - b. Contracting for the reclamation of abandoned drilling and production sites, saltwater disposal pits, drilling fluid pits, and access roads.
  - c. To pay mineral owners their royalty share in confiscated oil.

3. All moneys collected under this section must be deposited in the abandoned oil and gas well plugging and site reclamation fund. This fund must be maintained as a special fund and all moneys transferred into the fund are appropriated and must be used and disbursed solely for the purpose of defraying the costs incurred in carrying out the plugging or replugging of wells, the reclamation of well sites, and all other related activities. ~~However, when the fees accumulated in the fund exceed two hundred fifty thousand dollars, any additional fees collected by the oil and gas division of the industrial commission must be deposited in the general fund.~~

**SECTION 3. AMENDMENT.** Section 38-19-04 of the North Dakota Century Code is amended and reenacted as follows:

**38-19-04. Permit ~~or~~ and report required.** It is unlawful to commence any operations for the drilling, boring, excavating, or construction of a geothermal energy extraction facility, ~~which is used for other than private residential heating and cooling purposes,~~ without first securing a permit from the director of mineral resources, under such rules as may be adopted by the commission and after paying to the commission a fee for each such facility in an amount to be prescribed by the commission by rule. The fee set must be related to the cost ~~of~~ regulation and inspection under this chapter.

A report is required upon completion of any geothermal energy extraction facility ~~used solely for private residential heating or cooling purposes.~~ The report must be prepared by the geothermal energy extraction facility installer on a form provided by the state geologist and must be furnished to the state geologist within thirty days after the completion of the facility. The report must contain relevant information the state geologist requires relating to the environmental safety of the facility, including the facility owner and location, a log of formations penetrated, ~~if any or total depth,~~ system specifications and design, and fluids used in the facility.

All construction of geothermal energy extraction facilities must comply with rules adopted under this chapter.

**SECTION 4.** Chapter 38-21 of the North Dakota Century Code is created and enacted as follows:

**38-21-01. Geophysical, geothermal, subsurface minerals, and coal exploration fund.** There is created a geophysical, geothermal, subsurface minerals, and coal exploration fund. The following must be deposited into the fund:

1. Fees collected under sections 38-08.1-04, 38-12-03, 38-12.1-05, and 38-19-04.
2. Money received from the forfeiture of bonds or other security required by section 38-08.1-03.1, 38-12-02, 38-12.1-04, or 38-19-03.
3. Money received by the industrial commission from any federal or state agency, or any other source, to satisfy the purposes for which the fund is established.
4. Money received for penalties imposed under section 38-08.1-07, 38-12-05, 38-12.1-08, or 38-19-07.

5. Money recovered from any person to recoup costs and expenses incurred by the industrial commission to satisfy any duty imposed by chapter 38-08.1, 38-12, 38-12.1, or 38-19.

**38-21-02. Fund uses.** Money in the fund may be used to pay costs and expenses incurred by the industrial commission to satisfy unfulfilled obligations imposed on persons regulated under chapters 38-08.1, 38-12, 38-12.1, and 38-19. To cure such obligations, the commission may enter contracts consistent with the requirements of section 38-08-04.4.

**38-21-03. Continuing appropriation - Cap.** All money collected under section 38-21-01 must be deposited in the fund established by that section. The fund must be maintained as a special fund and all money transferred into the fund is appropriated and must be used and disbursed solely for the purposes described in section 38-21-02. If, however, the fund reaches five hundred thousand dollars, any additional money collected under section 38-21-01 must be deposited in the general fund, provided there are no outstanding obligations to be paid by the fund.

**SECTION 5.** A new section to chapter 54-17.4 of the North Dakota Century Code is created and enacted as follows:

**Geologic data preservation fund - Continuing appropriation.** The geologic data preservation fund may be used to defray the expenses of preserving geologic data compiled by the commission and disseminating the data to county, state, and federal departments and agencies and members of the general public. All moneys collected for dissemination of geologic data under this section must be deposited in the geologic data preservation fund. This fund must be maintained as a special fund in the state treasury and all moneys transferred into the fund are appropriated and must be used and disbursed solely for the purpose of paying the current cost of providing information as determined by the commission based on actual costs.

<sup>165</sup> **SECTION 6. AMENDMENT.** Subsection 5 of section 54-44.4-02 of the North Dakota Century Code is amended and reenacted as follows:

5. Procurements through a contract or other instrument executed by the industrial commission under chapter 54-17.5 and under those statutes in title 38 authorizing the industrial commission to perform well and hole pluggings, reclamation work, equipment removal, leak prevention, and similar work.

**SECTION 7. BUDGET SECTION REPORT.** The industrial commission shall report to the budget section during the 2007-08 interim on revenues and expenditures of the abandoned oil and gas well plugging and site reclamation fund; geophysical, geothermal, subsurface minerals, and coal exploration fund; and the geologic data preservation fund for the biennium beginning July 1, 2007, and ending June 30, 2009.

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<sup>165</sup> Section 54-44.4-02 was also amended by section 6 of House Bill No. 1127, chapter 413, section 3 of House Bill No. 1128, chapter 464, and section 7 of Senate Bill No. 2019, chapter 45.

**SECTION 8. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 12, 2007  
Filed April 13, 2007



# MOTOR VEHICLES

## CHAPTER 315

### HOUSE BILL NO. 1087

(Transportation Committee)  
(At the request of the State Forester)

### STATE FORESTER EMERGENCY VEHICLES

AN ACT to amend and reenact subsection 2 of section 39-01-01 of the North Dakota Century Code, relating to inclusion of vehicles of the state forester as authorized emergency vehicles.

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

<sup>166</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 39-01-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Authorized emergency vehicles":
  - a. "Class A" authorized emergency vehicles means:
    - (1) Vehicles of a governmentally owned fire department.
    - (2) Vehicles when operated by or under the control of a police officer having authority to enforce the provisions of this title or by a salaried employee of a municipal police department within the municipality or by a sheriff or deputy sheriff not including special deputy sheriffs, or by the director of the department of corrections and rehabilitation and the director's authorized agents who have successfully completed training in the operation of class A authorized emergency vehicles.
    - (3) Vehicles clearly identifiable as property of the department of corrections and rehabilitation when operated or under the control of the director of the department of corrections and rehabilitation.
    - (4) Ambulances.
    - (5) Vehicles operated by or under the control of the director, district deputy director, or a district deputy game warden of the game and fish department.

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<sup>166</sup> Section 39-01-01 was also amended by section 1 of House Bill No. 1465, chapter 343.

- (6) Vehicles owned or leased by the United States and used for law enforcement purposes.
  - (7) Vehicles designated for the use of the adjutant general or assistant adjutant general in cases of emergency.
  - (8) Vehicles operated by or under the control of the director of the parks and recreation department.
  - (9) Vehicles operated by or under the control of a licensed railroad police officer and used for law enforcement purposes.
  - (10) Vehicles operated by or under the control of the state forester.
- b. "Class B" authorized emergency vehicles means wreckers and such other emergency vehicles as are authorized by the local authorities.
- c. "Class C" authorized emergency vehicles means:
- (1) Vehicles authorized by the state division of homeland security or local division of emergency management organizations.
  - (2) Vehicles used by volunteer firefighters while performing their assigned disaster and emergency responsibilities.
  - (3) Vehicles, other than ambulances, used by emergency medical services personnel.

Approved March 12, 2007  
Filed March 13, 2007

**CHAPTER 316****HOUSE BILL NO. 1090**

(Transportation Committee)

(At the request of the Department of Transportation)

**FLEET SERVICES AND HIGHWAY TAX DISTRIBUTION FUNDS**

AN ACT to amend and reenact sections 24-02-03.5, 39-02-05, 39-05-30, 39-18-02.1, 39-22.1-02.1, 39-24-05, and 39-29-05 of the North Dakota Century Code, relating to deposit of fleet services and highway tax distribution funds.

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

**SECTION 1. AMENDMENT.** Section 24-02-03.5 of the North Dakota Century Code is amended and reenacted as follows:

**24-02-03.5. User charges - Incidental revenues.** Each entity using the central vehicle management system shall pay a user charge to the director. The user charge will be set by the director and must be based upon the actual cost of the service provided, including depreciation. The user charges and any proceeds from insurance claims, motor vehicle sales, commercial refunds or rebates, or similarly derived proceeds must be remitted to the state treasurer for deposit in the highway fleet services fund.

**SECTION 2. AMENDMENT.** Section 39-02-05 of the North Dakota Century Code is amended and reenacted as follows:

**39-02-05. (See note for contingent expiration of amendment) Records of the department open to public inspection.** Except as provided by chapter 39-33, all registration and license records in the office of the department must be public records and must be open to inspection by the public during business hours. The director shall charge a uniform fee, not to exceed three dollars, for each item of information furnished to any person concerning a specific motor vehicle. However, such charges may not be assessed to a person requesting information concerning a motor vehicle of which that person is the owner, nor may such charges apply to law enforcement officials requesting motor vehicle information in their official capacity. All fees received under the provisions of this section must be credited to the motor vehicle registration highway tax distribution fund.

**SECTION 3. AMENDMENT.** Section 39-05-30 of the North Dakota Century Code is amended and reenacted as follows:

**39-05-30. Fees and revenues collected placed in ~~motor registration~~ highway tax distribution fund - Payment of salaries and expenses.** All fees and revenues received by the director under the provisions of this chapter must be deposited by the director in the state treasury. Such moneys must be placed in the motor registration highway tax distribution fund. All salaries and other expenses incurred in connection with the provisions of this chapter must be paid out of the motor registration highway tax distribution fund in the manner provided by law for the disbursement of said fund.

**SECTION 4. AMENDMENT.** Section 39-18-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**39-18-02.1. Disposition of fees.** Fees from registration of dealers must be deposited with the state treasurer and credited to the ~~motor vehicle registration~~ highway tax distribution fund.

**SECTION 5. AMENDMENT.** Section 39-22.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**39-22.1-02.1. Disposition of fees.** Fees from registration of dealers must be deposited with the state treasurer and credited to the ~~motor registration~~ highway tax distribution fund.

**SECTION 6. AMENDMENT.** Section 39-24-05 of the North Dakota Century Code is amended and reenacted as follows:

**39-24-05. Disposition of registration fees and trail tax - Transfer from highway tax distribution fund.** Fees from registration of snowmobiles must be deposited with the state treasurer and credited to the ~~motor vehicle registration~~ highway tax distribution fund. The snowmobile trail tax must be deposited in a state snowmobile fund in the state treasury. Additionally, an amount equal to the tax collected on thirty gallons [113.56 liters] of motor vehicle fuel multiplied by the number of collector snowmobiles and snowmobiles registered under this chapter must be transferred annually from the highway tax distribution fund, before allocation of the fund under section 54-27-19, and credited to the state snowmobile fund. The parks and recreation department may, upon appropriation by the legislative assembly, expend from such fund moneys it deems necessary for purposes of administering snowmobile safety programs and establishing and maintaining snowmobile facilities and programs.

**SECTION 7. AMENDMENT.** Section 39-29-05 of the North Dakota Century Code is amended and reenacted as follows:

**39-29-05. Disposition of registration fees and trail tax.**

1. Fees from registration of off-highway vehicles must be deposited with the state treasurer and credited to the ~~motor vehicle registration~~ highway tax distribution fund.
2. The off-highway vehicle trail tax must be deposited in a state off-highway vehicle fund in the state treasury. The parks and recreation department may, on appropriation by the legislative assembly, expend from that fund moneys for establishing off-highway vehicle facilities, off-highway vehicle use areas, and off-highway vehicle safety and education programs, and enforcement of this chapter.

Approved March 23, 2007

Filed March 23, 2007

**CHAPTER 317****HOUSE BILL NO. 1063**

(Transportation Committee)  
(At the request of the Highway Patrol)

**HIGHWAY PATROL JURISDICTION ON STATE  
PROPERTY**

AN ACT to amend and reenact subsection 11 of section 39-03-09 of the North Dakota Century Code, relating to the powers of the highway patrol.

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

**SECTION 1. AMENDMENT.** Subsection 11 of section 39-03-09 of the North Dakota Century Code is amended and reenacted as follows:

11. To exercise general police powers over all violations of law committed on state owned or leased property.

Approved March 23, 2007

Filed March 23, 2007

**CHAPTER 318****HOUSE BILL NO. 1064**

(Transportation Committee)  
(At the request of the Highway Patrol)

**HIGHWAY PATROL ASSETS FORFEITURE FUND**

AN ACT to create and enact a new section to chapter 39-03 of the North Dakota Century Code, relating to creation of the highway patrol assets forfeiture fund; and to provide a continuing appropriation.

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

**SECTION 1.** A new section to chapter 39-03 of the North Dakota Century Code is created and enacted as follows:

**Highway patrol - Assets forfeiture fund - Purpose - Continuing appropriation.** There is created a fund to be known as the highway patrol assets forfeiture fund. The fund consists of funds obtained from moneys, assets, and proceeds seized and forfeited pursuant to section 19-03.1-36, amounts received through court proceedings as restitution, amounts remaining from the forfeiture of property after the payment of expenses for forfeiture and sale authorized by law, and funds received from federal shared forfeiture proceedings. The total amount of deposits into the fund may not exceed three hundred thousand dollars within a biennium and any moneys in excess of that amount must be deposited in the general fund. The funds are appropriated as a continuing appropriation to the highway patrol for the following purposes:

1. For paying expenses necessary to inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited, pursuant to section 19-03.1-36, or of any other necessary expenses incident to the seizure, detention, or forfeiture of the property.
2. For paying overtime compensation incurred as a result of investigations or violations of any state criminal law or law relating to the control of drug abuse.
3. For purchasing equipment related to criminal interdiction.
4. For paying matching funds required as a condition for receipt of funds from a federal government program awarding monetary grants or assistance for the investigation or apprehension of persons violating the provisions of chapter 19-03.1.

The superintendent of the highway patrol, with the concurrence of the director of the office of management and budget, shall establish the necessary accounting procedures for the use of the fund and shall personally approve, in writing, all requests for the use of the fund.

Approved March 5, 2007  
Filed March 6, 2007

## CHAPTER 319

### SENATE BILL NO. 2263

(Senators Robinson, Klein, G. Lee)  
(Representatives Delmore, Nelson, Price)

### VETERANS' NUMBER PLATES

AN ACT to amend and reenact section 39-04-10.10 of the North Dakota Century Code, relating to veterans' number plates.

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

**SECTION 1. AMENDMENT.** Section 39-04-10.10 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-04-10.10. North Dakota veterans' cemetery number plates.**

1. The director may issue distinctive number plates to individuals eligible for interment in the North Dakota veterans' cemetery. The director shall issue a number plate under this section upon receiving:
  - a. Payment of all other fees required under this chapter for registration of a motor vehicle;
  - b. Payment of an ~~annual~~ initial fee of ~~five fifteen~~ dollars ~~for deposit of which ten dollars is to be deposited in the highway tax distribution fund and five dollars is to be deposited in the veterans' cemetery maintenance fund~~; and
  - c. Verification of ~~payment~~ subsequent payments of an annual surcharge of ten dollars paid to the adjutant general.
2. The department shall collect the fees and ~~the ten dollar~~ surcharge under this section. The department shall report to the legislative assembly on the funds collected under this section during each legislative session. The department shall pay the funds collected under ~~subdivision subdivisions b and c~~ of subsection 1 to the adjutant general monthly, who then, within ten days of receipt of the funds, shall deposit five dollars of each ~~surcharge~~ initial fee in the veterans' cemetery maintenance fund and the ~~ten dollar~~ surcharge shall be divided with ~~five dollars being deposited~~ in the veterans' cemetery trust fund and ~~the remaining five dollars of each surcharge being deposited~~ in the veterans' cemetery maintenance fund in the state treasury. ~~The state investment board shall manage the veterans' cemetery trust fund. Investment of the fund is the responsibility of the state treasurer who shall have full authority to invest the fund only in the same manner as the state investment board is authorized to make investments. At the request of the adjutant general, the interest in the veterans' cemetery trust fund must be deposited in the veterans' cemetery maintenance fund for the purpose of funding salaries and maintenance of the veterans' cemetery.~~

3. The veterans' cemetery trust fund may accept funds from private and federal sources.

Approved March 12, 2007  
Filed March 13, 2007



**CHAPTER 320****SENATE BILL NO. 2360**

(Senators Robinson, Wardner)  
(Representatives Hawken, Owens)

**NONPROFIT ORGANIZATION NUMBER PLATES**

AN ACT to amend and reenact section 39-04-10.13 of the North Dakota Century Code, relating to nonprofit organization number plates.

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

**SECTION 1. AMENDMENT.** Section 39-04-10.13 of the North Dakota Century Code is amended and reenacted as follows:

**39-04-10.13. Public or nonprofit organization number plate.**

1. The director shall develop an organization number plate program for distinctive number plates for qualifying public and for nonprofit organizations recognized by the internal revenue service as tax exempt under 26 U.S.C. 501(c)(3). When appropriate, the department shall design a distinctive number plate to minimize the changes to a single application of overlay on the left side of the number plate. The organization may submit a design for the distinctive number plate for approval by the director. Upon approval by the director and proper application with proof of a minimum of ~~four hundred~~ four hundred fifty applicants and a one-time payment of one thousand five hundred dollars for a certain organization's number plate, the director shall include the number plate in the organization number plate program.
2. The following organizations do not qualify for an organization number plate: out-of-state colleges and universities; groups within high schools, junior colleges, universities, and technical schools, including individual boosters, athletic boosters, and similar groups; unions; political organizations; religious organizations; groups that promote racial or social disharmony; and public offices.
3. Upon proper application for a plate in the organization number plate program and payment of all other fees required under this chapter for registration of the motor vehicle and payment of an additional annual fee of twenty-five dollars, a qualified applicant is entitled to issuance of a certain organization number plate. However, the director may not issue the plates to the owner of a passenger motor vehicle or a truck the gross weight of which equals or exceeds ten thousand pounds [4535.92 kilograms].
4. The director shall deposit ten dollars of the additional organization number plate fee in the highway tax distribution fund and transfer monthly fifteen dollars to the proper organization to support programs of that organization.

Approved March 12, 2007

Filed March 13, 2007

**CHAPTER 321****HOUSE BILL NO. 1398**

(Representatives Schmidt, DeKrey, Metcalf)  
(Senator Taylor)

**DISABLED VETERAN MOTOR VEHICLE  
REGISTRATION EXEMPTION**

AN ACT to amend and reenact subdivision j of subsection 2 of section 39-04-18 of the North Dakota Century Code, relating to motor vehicles of disabled veterans which are exempt from registration fees.

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

**SECTION 1. AMENDMENT.** Subdivision j of subsection 2 of section 39-04-18 of the North Dakota Century Code is amended and reenacted as follows:

- j. ~~Passenger motor~~ Motor vehicles, ~~house cars, or pickup trucks~~ not exceeding ~~ten~~ twenty-six thousand pounds [~~4535.92~~ 11793.40 kilograms] gross weight owned and operated by a disabled veteran under the provisions of Public Law 79-663 [38 U.S.C. 3901] or who has a one hundred percent service-connected disability as determined by the department of veterans' affairs who is entitled to display a distinctive license plate issued by the department upon the payment of a fee of five dollars. This exemption applies to no more than two such motor vehicles owned by a disabled veteran at any one time.

Approved March 23, 2007  
Filed March 23, 2007

## CHAPTER 322

### HOUSE BILL NO. 1227

(Representative Ruby)

(Senator G. Lee)

#### IDENTIFICATION CARD INFORMATION VERIFICATION

AN ACT to amend and reenact section 39-06-03.1 of the North Dakota Century Code, relating to verification of the information for an identification card.

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

<sup>167</sup> **SECTION 1. AMENDMENT.** Section 39-06-03.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-06-03.1. Nondriver photo identification card issued by director - Release of information - Penalty - Public awareness.**

1. The director shall issue ~~upon request~~ a nondriver color photo identification card to any North Dakota resident who fulfills the requirements of this section. An application for an identification card must be made on a form furnished by the director. Within thirty days from receipt of a complete application that includes the applicant's social security number, the director shall determine whether to issue and, if appropriate, issue a nondriver photo identification card to an applicant. The application must provide for the voluntary identification of the applicant as a donor under the provisions of chapter 23-06.2. If requested on the identification card application, the identification card issued by the director must include a statement making an anatomical gift under chapter 23-06.2. If the person is under the age of eighteen or at least the age of eighteen and under the age of twenty-one, the photo must be against the same color background required on a motor vehicle operator's license for an operator of that age.
2. ~~The name and date of birth on all original applications must be verified by a birth certificate or other~~ To confirm the identity of the applicant, the director or examining officer shall require satisfactory evidence be provided by the applicant. Satisfactory evidence includes a certified copy of the applicant's birth certificate or other evidence reasonably calculated to permit the determination of the date of birth and identification of the applicant by the director or examining officer. Applicants must produce documents which will be acceptable as listed below:
  - a. ~~Birth certificate.~~

<sup>167</sup> Section 39-06-03.1 was also amended by section 1 of Senate Bill No. 2112, chapter 323, and section 4 of Senate Bill No. 2163, chapter 237.

- b. ~~Any other documentary evidence which confirms to the satisfaction of the examining officer the true identity and date of birth of the applicant.~~
- 3. The fee is eight dollars. Fees collected pursuant to this section must be paid monthly into the highway fund in the state treasury.
- 4. Any information obtained by the director from an applicant for the issuance, renewal, or replacement of an identification card issuable pursuant to this chapter may only be released in accordance with the provisions of section 39-16-03.
- 5. It is a class B misdemeanor for any person, except the director or the director's authorized agent, to print or otherwise produce or reproduce cards or their components, which may be utilized as identification cards issued pursuant to this section.
- 6. The director may advertise the availability and the use of the card.
- 7. Identification cards issued pursuant to this section are sufficient identification for all identification purposes.
- 8. The director shall cancel any card upon determining that the holder is not entitled to the issuance of the card under the laws of this state, or the holder has failed to give the required or correct information to the director, or has committed fraud in making the application, or the fee was in the form of an insufficient or no-account check. Upon cancellation, the holder shall surrender the card to the director. When a cancellation is in effect, any law enforcement officer may take custody of the card.
- 9. A duplicate card may be obtained by making an application and paying an eight dollar fee. For a cardholder who has reached the age of eighteen or twenty-one, a replacement card may be obtained by making an application and paying an eight dollar fee.
- 10. The director may not withhold the issuance of a nondriver color photo identification card without reasonable cause.

Approved April 9, 2007  
Filed April 10, 2007

**CHAPTER 323****SENATE BILL NO. 2112**

(Transportation Committee)

(At the request of the Department of Transportation)

**OPERATOR'S LICENSES AND NONDRIVER ID CARDS**

AN ACT to amend and reenact subsection 1 of section 39-06-03.1 and subsection 1 of section 39-06-19 of the North Dakota Century Code, relating to expiration of operator's licenses and nondriver photo identification cards.

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

<sup>168</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 39-06-03.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The director shall issue upon request a nondriver color photo identification card to any North Dakota resident who fulfills the requirements of this section. An application for an identification card must be made on a form furnished by the director. The application must provide for the voluntary identification of the applicant as a donor under the provisions of chapter 23-06.2. If requested on the identification card application, the identification card issued by the director must include a statement making an anatomical gift under chapter 23-06.2. If the person is under the age of eighteen or at least the age of eighteen and under the age of twenty-one, the photo must be against the same color background required on a motor vehicle operator's license for an operator of that age. Subject to the provisions of subsection 1 of section 39-06-19, identification cards expire eight years from the date of issue and may be renewed.

**SECTION 2. AMENDMENT.** Subsection 1 of section 39-06-19 of the North Dakota Century Code is amended and reenacted as follows:

1. Every operator's license issued under this chapter expires and is renewed according to this section. The expiration date of an operator's license for a person whose birth occurred in a year ending in an odd numeral is twelve midnight on the anniversary of the birthday in the second subsequent year ending in an odd numeral. The expiration date of an operator's license for a person whose birth occurred in a year ending in an even numeral is twelve midnight on the anniversary of the birthday in the second subsequent year ending in an even numeral. A person who has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States, a pending application for asylum in the United States, a pending or approved application for temporary protected status in the United States, approved deferred action status, or a pending application for adjustment of status to that of

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<sup>168</sup> Section 39-06-03.1 was also amended by section 1 of House Bill No. 1227, chapter 322, and section 4 of Senate Bill No. 2163, chapter 237.

an alien lawfully admitted for permanent residence or conditional permanent residence status in the United States will be issued a temporary operator's license or nondriver photo identification card. The temporary operator's license or identification card is valid only during the period of time of the applicant's authorized stay in the United States or, if there is no definite end to the period of authorized stay, a period of one year. The license or card may be renewed only upon presentation of valid documentary evidence that the status has been extended.

Approved March 7, 2007  
Filed March 8, 2007

**CHAPTER 324****HOUSE BILL NO. 1158**

(Representatives DeKrey, Delmore, Karls)  
(Senator Christmann)

**OPERATOR'S LICENSE ROAD TEST VEHICLE USE**

AN ACT to amend and reenact subsection 3 of section 39-06-17 of the North Dakota Century Code, relating to a restricted permit to operate an automobile.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 39-06-17 of the North Dakota Century Code is amended and reenacted as follows:

3. A restricted operator's license or permit to operate the parent's or guardian's automobile, or an automobile which is equipped with dual controls and while accompanied by a qualified instructor, may be issued to any child, who is at least fourteen years of age, and otherwise qualified, upon the written recommendation of the parent or guardian. A child may operate an automobile that is not the parent's or guardian's to take the road test. No operator's license may be issued until the child, accompanied by the parent or guardian, appears in person and satisfies the director that:
  - a. The child is at least fourteen years of age.
  - b. The child is qualified to operate an automobile safely.
  - c. It is necessary for the child to drive the parent's or guardian's automobile without being accompanied by an adult.
  - d. The child has:
    - (1) Completed a course of classroom instruction and a course of behind-the-wheel instruction acceptable to the director; or
    - (2) Successfully completed a course at an approved commercial driver training school.

The parent or guardian at all times is responsible for any and all damages growing out of the negligent operation of a motor vehicle by any such child. The provisions of this subsection do not authorize the child to drive a commercial truck, motorbus, or taxicab except the holder of a class D license, fourteen or fifteen years of age, may drive a farm motor vehicle having a gross weight of fifty thousand pounds [22679.62 kilograms] when used to transport agricultural products, farm machinery, or farm supplies to or from a farm when so operated within one hundred fifty miles [241.40 kilometers] of the driver's farm.

Approved March 21, 2007  
Filed March 21, 2007

**CHAPTER 325****HOUSE BILL NO. 1069**

(Transportation Committee)

(At the request of the Department of Transportation)

**OPERATOR'S LICENSES**

AN ACT to amend and reenact section 39-06-40, paragraph 9 of subdivision a of subsection 3 of section 39-06.1-10, paragraph 10 of subdivision b of subsection 3 of section 39-06.1-10, section 39-06.1-11, subsection 9 of section 39-20-07, and section 39-20-14 of the North Dakota Century Code, relating to unlawful use of a license, points entered against a driving record, addiction evaluation for a temporary restricted license, witnesses for interpretation of a chemical test, and an advisory given before a screening test; and to repeal section 39-16.1-20 of the North Dakota Century Code, relating to seizure of an operator's license.

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

**SECTION 1. AMENDMENT.** Section 39-06-40 of the North Dakota Century Code is amended and reenacted as follows:

**39-06-40. Unlawful use of license - Penalty.** It is a class B misdemeanor for any person:

1. To display or cause or permit to be displayed or have in possession any canceled, revoked, ~~suspended~~, fictitious, or fraudulently altered operator's license, permit, or nondriver photo identification card;
2. To lend one's operator's license, permit, or nondriver photo identification card to any other person or knowingly permit the use thereof by another;
3. To display or represent as one's own any operator's license, permit, or nondriver identification card not issued to that person;
4. To fail or refuse to surrender to the director upon demand any operator's license, permit, or nondriver photo identification card which has been suspended, revoked, or canceled;
5. To permit any unlawful use of an operator's license, permit, or nondriver photo identification card issued to that person; or
6. To use a false or fictitious name in any application for an operator's license, permit, or nondriver photo identification card or to knowingly make a false statement or to conceal a material fact or otherwise commit a fraud in the application.

The director upon receiving a record of conviction or other satisfactory evidence of the violation of this section shall immediately revoke the person's operator's license, driving privileges, permit, or nondriver photo identification card. The period of revocation is at the discretion of the director, not to exceed six months.



<sup>169</sup> **SECTION 2. AMENDMENT.** Paragraph 9 of subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

- (9) Except as provided in sections 39-21-44 and 39-21-45.1, knowingly driving with defective, nonexistent, or unlawful equipment in violation of ~~subsection 4 of~~ section 39-21-46, or equivalent ordinances 2 points

<sup>170</sup> **SECTION 3. AMENDMENT.** Paragraph 10 of subdivision b of subsection 3 of section 39-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

- (10) Except as provided in paragraph 9 of subdivision a, knowingly operating an unsafe vehicle in violation of ~~subdivision b of~~ ~~subsection 2 of~~ section 39-21-46, or equivalent ordinance 2 points

**SECTION 4. AMENDMENT.** Section 39-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.1-11. Temporary restricted license - Ignition interlock device.**

1. Except as provided under subsection 2, if the director has suspended a license under section 39-06.1-10 or has extended a suspension or revocation under section 39-06-43, upon receiving written application from the offender affected, the director may for good cause issue a temporary restricted operator's license valid for the remainder of the suspension period after seven days of the suspension period have passed.
2. If the director has suspended a license under chapter 39-20, or after a violation of section 39-08-01 or equivalent ordinance, upon written application of the offender the director may issue for good cause a temporary restricted license that 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 director may not issue a temporary restricted license to any offender whose operator's license has been

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<sup>169</sup> Section 39-06.1-10 was also amended by section 3 of House Bill No. 1069, chapter 325.

<sup>170</sup> Section 39-06.1-10 was also amended by section 2 of House Bill No. 1069, chapter 325.

revoked under section 39-20-04 or suspended upon a second or subsequent offense under section 39-08-01 or chapter 39-20, except that a temporary restricted license may be issued for good cause if the offender has not committed an offense for a period of two years before the date of the filing of a written application that must be accompanied by a report from an ~~addiction facility~~ appropriate licensed addiction treatment program or if the offender is participating in the drug court program and has not committed an offense for a period of three hundred sixty-five days before the date of the filing of a written application that must be accompanied by a recommendation from the district court. The director may conduct a hearing for the purposes of obtaining information, reports, and evaluations from courts, law enforcement, and citizens to determine the offender's conduct and driving behavior during the prerequisite period of time. The director may also require that an ignition interlock device be installed in the offender's vehicle.

3. The director may not issue a temporary restricted license for a period of license revocation or suspension imposed under subsection 5 of section 39-06-17; ~~or section 39-06-31; or subsection 3.4 of section 39-06.1-10.~~ A temporary restricted license may be issued for suspensions ordered under subsection 7 of section 39-06-32 if it could have been issued had the suspension resulted from in-state conduct.
4. A restricted license issued under this section is solely for the use of a motor vehicle during the licensee's normal working hours and may contain any other restrictions authorized by section 39-06-17. Violation of a restriction imposed according to this section is deemed a violation of section 39-06-17.

<sup>171</sup> **SECTION 5. AMENDMENT.** Subsection 9 of section 39-20-07 of the North Dakota Century Code is amended and reenacted as follows:

9. Notwithstanding any statute or rule to the contrary, a defendant who has been found to be indigent by the court in the criminal proceeding at issue 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. If the state toxicologist, the director of the state crime laboratory, or any employee of either, is subpoenaed to testify by a defendant who is not indigent and the defendant does not call the witness to establish relevant evidence, the court shall order the defendant to pay costs to the witness as provided in section 31-01-16. An indigent defendant may also subpoena the individual who withdrew the defendant's blood by following the same procedure.

**SECTION 6. AMENDMENT.** Section 39-20-14 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>171</sup> Section 39-20-07 was also amended by section 3 of House Bill No. 1396, chapter 339.

**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 must be performed by an enforcement officer certified as a chemical test operator by the director of the state crime laboratory or the director's designee and according to methods and with devices approved by the director of the state crime laboratory or the director's designee. The results of such screening test must 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 up to ~~three~~ four years of that person's driving privileges. If such person refuses to submit to such screening test or tests, none may be given, but such refusal is 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 must be available. However, the director must not revoke a person's driving privileges for refusing to submit to a screening test requested under this section if the person provides a sufficient breath, blood, or urine sample for a chemical test requested under section 39-20-01 for the same incident. No provisions of this section may supersede any provisions of chapter 39-20, nor may 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 director of the state crime laboratory or the director's designee as qualified to perform analysis for alcohol in a person's blood, breath, saliva, or urine.

**SECTION 7. REPEAL.** Section 39-16.1-20 of the North Dakota Century Code is repealed.

Approved March 9, 2007

Filed March 12, 2007

**CHAPTER 326****HOUSE BILL NO. 1068**

(Transportation Committee)

(At the request of the Department of Transportation)

**COMMERCIAL DRIVER'S LICENSES**

AN ACT to amend and reenact section 39-06.2-06, subsections 8, 10, and 12 of section 39-06.2-10, and section 39-06.2-16 of the North Dakota Century Code, relating to commercial driver's licenses.

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

<sup>172</sup> **SECTION 1. AMENDMENT.** Section 39-06.2-06 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.2-06. Commercial driver's license required.**

1. Except when driving under a commercial driver's instruction permit and accompanied by the holder of a commercial driver's license valid for the vehicle being driven, no person may drive a commercial motor vehicle on the highways of this state unless the person holds and is in immediate possession of a commercial driver's license with applicable endorsements valid for the vehicle the person is driving. This subsection does not apply:
  - a. When the vehicle being driven is a house car or a vehicle towing a travel trailer being used solely for personal rather than commercial purposes.
  - b. When the vehicle being driven constitutes emergency or firefighting equipment necessary to the preservation of life or property.
  - c. When the vehicle is being driven for military purposes, subject to any limitations imposed by 49 CFR part 383.3(c).
2. No person may drive a commercial motor vehicle on the highways of this state while the person's driving privilege is suspended, revoked, or canceled, while subject to a disqualification.
3. The provisions of this chapter are waived, as to farm-to-market operations by farmers, but limited to those operators of a farm vehicle that is:
  - a. Controlled and operated by a farmer.

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<sup>172</sup> Section 39-06.2-06 was also amended by section 1 of House Bill No. 1400, chapter 327.

- b. Used to transport either agricultural products, farm machines, farm supplies, or both, to or from a farm.
  - c. Not used in the operations of a common or contract carrier.
  - d. Used within one hundred fifty miles [241.40 kilometers] of the person's farm.
4. The provisions of this chapter are waived as to an individual employed by and operating a vehicle at the request of and within a political subdivision, with a population of less than three thousand, during an emergency declared by that political subdivision for the removal of snow and ice. This waiver only applies when the regularly employed driver is unavailable or the employing political subdivision determines that additional assistance is required.
  5. Pursuant to the limitations imposed by 49 CFR, part 383.3, the required knowledge and skills tests may be waived and a restricted commercial driver's license issued to employees of agrichemical businesses, custom harvesters, farm retail outlets and suppliers, and livestock feeders.

**SECTION 2. AMENDMENT.** Subsections 8, 10, and 12 of section 39-06.2-10 of the North Dakota Century Code are amended and reenacted as follows:

8. For a second or subsequent conviction of driving while under the influence or being under the influence of a controlled substance or refusal to be tested while operating a noncommercial motor vehicle, a commercial driver's licenseholder must be disqualified from operating a commercial motor vehicle for life.
10. For a second or subsequent conviction for leaving the scene of an accident while operating a noncommercial motor vehicle, a commercial driver's licenseholder must be disqualified from operating a commercial motor vehicle for life.
12. For a second or subsequent conviction for using a vehicle to commit a felony while operating a noncommercial motor vehicle, a commercial driver's licenseholder must be disqualified from operating a commercial motor vehicle for life.

**SECTION 3. AMENDMENT.** Section 39-06.2-16 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.2-16. Reciprocity.**

1. Notwithstanding any other provision of law, a person may drive a commercial motor vehicle in this state if the person has a valid commercial driver's license or commercial driver's license instruction permit issued by any state, or province or territory of Canada, in accordance with the minimum federal standards for the issuance of a commercial motor vehicle driver's license, if the person's license or permit is not suspended, revoked, or canceled, and if the person is not disqualified from driving a commercial motor vehicle.

2. The director must give all out-of-state convictions full faith and credit if the driver is licensed by this state at the time of the conviction or becomes licensed by this state at a later time and treat them for sanctioning purposes under this chapter as if they occurred in this state. For purposes of this section, originals, photostatic copies, or electronic transmissions of the records of the driver's licensing or other authority of the other jurisdiction are sufficient evidence whether or not they are certified copies.

Approved March 2, 2007  
Filed March 2, 2007

**CHAPTER 327****HOUSE BILL NO. 1400**

(Representative Belter)

**COMMERCIAL DRIVER'S LICENSE EXEMPTIONS**

AN ACT to amend and reenact section 39-06.2-06 of the North Dakota Century Code, relating to commercial driver's license exemptions.

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

<sup>173</sup> **SECTION 1. AMENDMENT.** Section 39-06.2-06 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.2-06. Commercial driver's license required.**

1. Except when driving under a commercial driver's instruction permit and accompanied by the holder of a commercial driver's license valid for the vehicle being driven, no person may drive a commercial motor vehicle on the highways of this state unless the person holds and is in immediate possession of a commercial driver's license with applicable endorsements valid for the vehicle the person is driving. This subsection does not apply:
  - a. When the vehicle being driven is a house car or a vehicle towing a travel trailer being used solely for personal rather than commercial purposes.
  - b. When the vehicle being driven constitutes emergency or firefighting equipment necessary to the preservation of life or property.
2. No person may drive a commercial motor vehicle on the highways of this state while the person's driving privilege is suspended, revoked, or canceled, while subject to a disqualification.
3. The provisions of this chapter are waived, as to farm-to-market operations by farmers, but limited to those operators of a farm vehicle that is:
  - a. Controlled and operated by a farmer.
  - b. Used to transport either agricultural products, including trees, farm machines, farm supplies, or both, to or from a farm.
  - c. Not used in the operations of a common or contract carrier.

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<sup>173</sup> Section 39-06.2-06 was also amended by section 1 of House Bill No. 1068, chapter 326.

- d. Used within one hundred fifty miles [241.40 kilometers] of the person's farm.
4. The provisions of this chapter are waived as to an individual operating a vehicle at the request of and within a political subdivision during an emergency declared by that political subdivision for the removal of snow and ice.
5. Pursuant to 49 CFR, part 383.3, the required knowledge and skills tests may be waived and a restricted commercial driver's license issued to employees of agrichemical businesses, custom harvesters, farm retail outlets and suppliers, including retailers and suppliers of trees, and livestock feeders.

Approved March 29, 2007  
Filed March 28, 2007



**CHAPTER 328****SENATE BILL NO. 2146**

(Senators Heitkamp, G. Lee, Robinson)  
(Representatives Amerman, Gulleason, R. Kelsch)

**PROOF OF INSURANCE**

AN ACT to amend and reenact subsection 1 of section 39-08-20 of the North Dakota Century Code, relating to proof of insurance.

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

<sup>174</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 39-08-20 of the North Dakota Century Code is amended and reenacted as follows:

1. A person may not drive, or the owner may not cause or knowingly permit to be driven, a motor vehicle in this state without a valid policy of liability insurance in effect in order to respond in damages for liability arising out of the ownership, maintenance, or use of that motor vehicle in the amount required by chapter 39-16.1. Upon being stopped by a law enforcement officer for the purpose of enforcing or investigating the possible violation of an ordinance or state law ~~or during the investigation of an accident~~, the person driving the motor vehicle shall provide to the officer upon request satisfactory evidence of the policy required under this section. If unable to comply with the request, that person may be charged with a violation of this section if that person fails to submit satisfactory evidence of the policy to the officer or the officer's agency within twenty days ~~of from~~ the date of the request; however, during the investigation of an accident, the person may be charged with a violation of this section if that person fails to provide the satisfactory evidence within three business days from the date of the request. If that person produces satisfactory evidence of a valid policy of liability insurance in effect at the time of the alleged violation of this section to the officer, the officer's agency, or a court, that person may not be convicted or assessed any administration fee for violation of this section. Notwithstanding section 26.1-30-18, a person may be convicted for failure to have a valid policy of liability insurance in effect under this section if the time of acquisition of the policy was after the time of the alleged incidence of driving without liability insurance. If the time of acquisition of the policy comes into question, the driver or owner has the burden of establishing the time of acquisition. If the driver is not an owner of the motor vehicle, the driver does not violate this section if the driver provides the court with evidence identifying the owner of the motor vehicle and describing circumstances under which the owner caused or permitted the driver to drive the motor vehicle. Violation of this section is a class B misdemeanor and the sentence imposed must include a fine of at least one hundred fifty dollars which may not be

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<sup>174</sup> Section 39-08-20 was also amended by section 2 of House Bill No. 1037, chapter 271.

suspended. A person convicted for a second or subsequent violation of driving without liability insurance within an eighteen-month period must be fined at least three hundred dollars which may not be suspended.

Approved April 26, 2007  
Filed April 27, 2007

**CHAPTER 329****HOUSE BILL NO. 1114**

(Representative Gruchalla)

**MINIMUM SPEED LIMITS**

AN ACT to amend and reenact section 39-09-09 of the North Dakota Century Code, relating to minimum speed limits.

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

**SECTION 1. AMENDMENT.** Section 39-09-09 of the North Dakota Century Code is amended and reenacted as follows:

**39-09-09. Minimum speed limits.**

1. ~~No person~~ An individual may not drive a motor vehicle at ~~such a slow reduced~~ speed so as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.
2. ~~Whenever~~ If the director and the superintendent of the highway patrol, acting jointly, or a local ~~authorities~~ authority within ~~their respective jurisdictions~~ the authority's jurisdiction, ~~determine~~ determines on the basis of an engineering and traffic investigation that slow speeds on any highway or part of a highway impede the safe, normal, and reasonable movement of traffic, the director and superintendent or ~~such~~ the local authority may determine and declare a minimum speed limit below which ~~no person~~ an individual may not drive a vehicle except when necessary for safe operation or in compliance with law, and that limit ~~shall be~~ is effective when posted upon appropriate fixed or variable signs.

Approved March 5, 2007

Filed March 6, 2007

## CHAPTER 330

### HOUSE BILL NO. 1310

(Representatives Gruchalla, Porter, Ruby, Solberg, Weisz)  
(Senator Lyson)

## EMERGENCY VEHICLE LIGHTS

AN ACT to amend and reenact section 39-10-03 of the North Dakota Century Code, relating to class A authorized emergency vehicle lights.

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

**SECTION 1. AMENDMENT.** Section 39-10-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-10-03. Class A authorized emergency vehicles.**

1. The driver of a class A authorized emergency vehicle may:
  - a. Park or stand, irrespective of the provisions of this chapter.
  - b. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation.
  - c. Exceed the speed limit so long as the driver does not endanger life or property.
  - d. Disregard regulations governing direction of movement or turning in specified directions.
2. The exceptions herein granted to a class A authorized emergency vehicle apply only:
  - a. When the authorized emergency vehicle is in pursuit of or apprehension of a violator or a suspected violator requiring the use of these exemptions.
  - b. When the class A authorized emergency vehicle is being operated in response to a reported emergency involving a possible personal injury, death, or damage to property, and when giving adequate warning by use of a flashing red or combination red and white lights that are visible under normal atmospheric conditions for at least five hundred feet [152.4 meters] and if appropriate, giving audible signal by siren or airhorn. A law enforcement vehicle that is otherwise a class A authorized emergency vehicle may display a flashing blue light in addition to and under the same conditions as the other colors allowed in this subdivision.
  - c. In any instance when the head of a law enforcement agency deems advisable within the area of that person's jurisdiction for the protection of person and property and when giving audible signal by siren or when giving adequate warning by use of a flashing red or combination red and white lights which are visible under normal

atmospheric conditions for at least five hundred feet [152.4 meters].  
A law enforcement vehicle that is otherwise a class A authorized emergency vehicle may display a flashing blue light in addition to and under the same conditions as the other colors allowed in this subdivision.

3. ~~No~~ An emergency vehicle may not display or permit to be displayed any red lamp except when operated on official business.
4. ~~Repeated by S.L. 1979, ch. 424, § 2.~~
5. Any law enforcement officer as provided in paragraph 2 of subdivision a of subsection 2 of section 39-01-01 having stopped another vehicle along a highway, and while still involved in that incident, or any other ~~such~~ related activity, may use amber lights, visible under normal atmospheric conditions for at least five hundred feet [152.4 meters], for the purpose of maintaining traffic flow.

Approved March 12, 2007  
Filed March 13, 2007

**CHAPTER 331****SENATE BILL NO. 2175**

(Senators Lyson, G. Lee, Stenehjem)  
(Representative Ruby)

**INTERSECTION RIGHT OF WAY**

AN ACT to amend and reenact section 39-10-22 of the North Dakota Century Code, relating to right of way of vehicles at an intersection.

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

**SECTION 1. AMENDMENT.** Section 39-10-22 of the North Dakota Century Code is amended and reenacted as follows:

**39-10-22. Vehicle approaching or entering intersection.**

1. ~~When two vehicles approach~~ If a vehicle approaches or ~~enter~~ enters an intersection ~~that does not controlled by have~~ an official traffic-control device ~~and another vehicle approaches or enters from a different highways highway~~ at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right. If the intersection is T-shaped and ~~does not controlled by have~~ an official traffic-control device, the driver of the vehicle on the terminating street or highway shall yield to the vehicle on the continuing street or highway.
2. If a vehicle approaches an intersection that has traffic-control signals that usually exhibit different colored lights and the signals are not lit, the driver of the vehicle shall stop and yield as required under subsection 2 of section 39-10-24.
3. The right-of-way rule declared in this section is modified at through highways and otherwise as stated in this chapter.

Approved March 2, 2007  
Filed March 2, 2007

**CHAPTER 332****HOUSE BILL NO. 1236**

(Representatives S. Meyer, Delmore, Hawken, N. Johnson)  
(Senators Bakke, Krebsbach)

**LITTERING**

AN ACT to amend and reenact section 39-10-59 of the North Dakota Century Code, relating to littering.

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

**SECTION 1. AMENDMENT.** Section 39-10-59 of the North Dakota Century Code is amended and reenacted as follows:

**39-10-59. Garbage, glass, rubbish, and injurious materials on highway prohibited.**

1. ~~No person~~ An individual may ~~throw or not~~ deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans, rubbish, or any other litter. In addition, an individual may not deposit upon any highway any other substance likely to injure any person, animal, or vehicle.
2. ~~Any person~~ An individual who ~~drops~~ deposits, or permits to be ~~dropped~~ deposited, upon any highway any destructive or injurious material shall immediately remove or cause to be removed the same ~~or cause it to be removed~~.
3. ~~Any person~~ An individual removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from ~~such~~ the vehicle.

Approved March 5, 2007  
Filed March 6, 2007

**CHAPTER 333****HOUSE BILL NO. 1234**

(Representatives Porter, Boe, R. Kelsch, Klein)  
(Senators Krauter, Krebsbach)

**EMERGENCY VEHICLE FLASHING GREEN LIGHTS**

AN ACT to create and enact a new section to chapter 39-10 of the North Dakota Century Code, relating to the use of flashing green lights.

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

**SECTION 1.** A new section to chapter 39-10 of the North Dakota Century Code is created and enacted as follows:

**Flashing green lights.** An authorized emergency vehicle may not display a flashing green light unless the vehicle is used as a command center in an emergency.

Approved March 12, 2007

Filed March 13, 2007



**CHAPTER 334****HOUSE BILL NO. 1295**

(Representatives Weisz, Damschen, Delzer)  
(Senators Erbele, Wanzek)

**EXCESSIVE SIZE AND WEIGHT VEHICLE PERMITS**

AN ACT to amend and reenact section 39-12-02 of the North Dakota Century Code, relating to permits for vehicles of excessive size and weight; and to declare an emergency.

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

<sup>175</sup> **SECTION 1. AMENDMENT.** Section 39-12-02 of the North Dakota Century Code is amended and reenacted as follows:

**39-12-02. Special permits for vehicles of excessive size and weight issued - Contents - Fees.**

1. The highway patrol and local authorities in their respective jurisdictions, upon application and payment of the appropriate charges and for good cause shown, may issue a special written permit authorizing the applicant to operate or move a vehicle, mobile home, or modular unit of a size or weight exceeding the maximum specified by this chapter, upon a highway under the jurisdiction of the body granting the permit. Every permit may designate the route to be traversed and may contain any other restrictions or conditions deemed necessary by the body granting the permit. Every permit must be carried in the vehicle to which it refers and must be opened to inspection by any peace officer or agent of the superintendent of the highway patrol unless prior approval is obtained from the highway patrol. It is a violation of this chapter for any person to violate any of the terms or conditions of the permit. ~~All permits for the movement of excessive size and weight on state highways must be for single trips only.~~ The highway patrol and local authorities may adopt rules governing the movement of oversize and overweight vehicles.
2. Upon any application for a permit to move a new manufactured building or modular unit from outside this state to be located anywhere within this state, the manufacturer is deemed to have certified that the new manufactured building or modular unit meets all applicable building codes and all applicable electrical wiring and equipment, plumbing, and fire standards. The state is not liable to any person for issuing a permit in violation of this subsection.
3. An appropriate charge must be made for each permit and all funds collected hereunder by the highway patrol must be deposited in the state highway fund for use in the construction and maintenance of

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<sup>175</sup> Section 39-12-02 was also amended by section 1 of Senate Bill No. 2406, chapter 335.

highways and operating expenses of the department of transportation. Except for publicly owned vehicles that provide service beyond the agency's jurisdiction, official, publicly owned, emergency, or military vehicles are not subject to charges for permits. The minimum fee for selected charges is as follows:

- a. The fee for the ten percent weight exemption, harvest and wintertime, is fifty dollars per month for fees paid on a monthly basis or two hundred fifty dollars per year for fees paid on a yearly basis. Unused fees paid on a monthly basis are refundable. Unused fees paid on a yearly basis are not refundable.
  - b. The fee for a non-self-issuing interstate permit is ten dollars per trip or three hundred dollars per calendar year for unlimited trips.
  - c. The fee for special mobile equipment is twenty-five dollars per trip.
  - d. The fee for engineering is twenty-five dollars per trip.
  - e. The fee for faxing a permit is five dollars.
  - f. The fee for a single trip permit is twenty dollars per trip.
  - g. The fee for a bridge length permit is thirty dollars per trip or one hundred fifty dollars per calendar year.
  - h. The fee for a longer combination vehicle permit is one hundred dollars per month for fees paid on a monthly basis.
4. The director of tax equalization of the county of destination must be furnished a copy of the permit for the movement of an overdimensional mobile home.

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

Approved April 9, 2007  
Filed April 10, 2007

**CHAPTER 335****SENATE BILL NO. 2406**

(Senators J. Lee, Fischer, Lyson, Stenehjem)  
(Representative Weisz)

**OVERWIDTH TRAVEL PERMIT FEES**

AN ACT to create and enact a new subdivision to subsection 3 of section 39-12-02 of the North Dakota Century Code, relating to overwidth travel permits.

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

<sup>176</sup> **SECTION 1.** A new subdivision to subsection 3 of section 39-12-02 of the North Dakota Century Code is created and enacted as follows:

The fee for an overwidth vehicle or load that is fourteen feet six inches [4.42 meters] or less is twenty dollars per trip or five hundred dollars per calendar year unless the vehicle is a noncommercial fish house trailer being moved by the owner, then the fee is twenty dollars per calendar year.

Approved April 11, 2007

Filed April 13, 2007

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<sup>176</sup> Section 39-12-02 was also amended by section 1 of House Bill No. 1295, chapter 334.

## CHAPTER 336

### HOUSE BILL NO. 1258

(Representatives Gulleson, Amerman, Brandenburg, DeKrey)  
(Senator Heitkamp)

## TOURIST-ORIENTED DIRECTIONAL SIGNS

AN ACT to amend and reenact section 39-13-09 of the North Dakota Century Code, relating to tourist-oriented directional signs; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 39-13-09 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-13-09. Tourist-oriented directional signs.**

1. In this section:
  - a. "Tourist-oriented directional sign" means a sign providing identification of and directional information for tourist-related businesses, services, or activities.
  - b. "Tourist-related business, service, or activity" means rural agricultural business and tourism attractions, including recreation, historical sites, festival and cultural events, lodging and food services which are singularly and uniquely related to historical, cultural, or recreational tourist attractions, and guide services, but does not include any business operated under a franchise agreement. The term includes a business that derives a major portion of income or visitors from individuals who do not reside in the immediate area of the business. The immediate area of the business is within the city limits in which the business is located, or within one mile [1.61 kilometers] from the business if located outside city limits.
2. Notwithstanding section 24-01-12, the department shall establish by rule standards for the erection and maintenance of tourist-oriented directional signs. The rules must conform to federal standards for tourist-oriented directional signs adopted under 23 U.S.C. 131(q) as of July 1, 1991, and with the manual adopted by the department under section 39-13-06 except that the rules must provide that logos may not be used on tourist-oriented directional signs.
3. Upon the request of any person, a local authority that has adopted an ordinance permitting the erection of tourist-oriented directional signs may authorize their erection within the right of way of any highway under the jurisdiction of the local authority except that tourist-oriented directional signs may not be erected within the right of way of the interstate highway system. A tourist-oriented directional sign may not be erected unless it is erected in compliance with rules adopted by the department for such signs.

4. The permit applicant shall engage a qualified contractor for the erection, installation, and maintenance of tourist-oriented directional signs within the right of way of any highway under the jurisdiction of the department except that tourist-oriented directional signs may not be erected within the right of way of the interstate highway system. A tourist-oriented directional sign may not be erected unless it is erected in compliance with rules adopted by the department for such signs.

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

Approved April 9, 2007  
Filed April 10, 2007

**CHAPTER 337****SENATE BILL NO. 2113**

(Transportation Committee)

(At the request of the Department of Transportation)

**MOTOR VEHICLE REGISTRATION AND CARRIER  
REGISTRATION**

AN ACT to amend and reenact subsection 9 of section 39-04-05, section 39-19-06, and subsection 3 of section 57-40.3-04 of the North Dakota Century Code, relating to refusing motor vehicle registration, adopting the unified carrier registration plan, and claiming a motor vehicle excise tax exemption; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subsection 9 of section 39-04-05 of the North Dakota Century Code is amended and reenacted as follows:

9. When the vehicle is operating in violation of the provisions of the international registration plan ~~or~~, international fuel tax agreement, or the unified carrier registration plan.

**SECTION 2. AMENDMENT.** Section 39-19-06 of the North Dakota Century Code is amended and reenacted as follows:

**39-19-06. ~~Single state insurance~~ Unified carrier registration system.**

The director may adopt all rules necessary to enable this state to participate in the ~~single state insurance~~ unified carrier registration system for motor carriers authorized by ~~section 4005 of the Intermodal Surface Transportation Efficiency Act of 1991 [Pub. L. No. 102-240, 105 Stat. 4914, 49 U.S.C. 41506]~~ subtitle C of the Safe, Accountable, Flexible, Efficient Transportation Act of 2005 [Pub. L. 109-59; 119 Stat. 1761; 49 U.S.C. 14504a] and by applicable rules and regulations of ~~the interstate commerce commission.~~ In determining whether to adopt rules as permitted by this section, the director shall consider the costs and benefits to the state of participating in the ~~single state insurance~~ unified carrier registration program. Any moneys derived from participation in the ~~single state insurance~~ unified carrier registration program must be deposited in the highway fund.

<sup>177</sup> **SECTION 3. AMENDMENT.** Subsection 3 of section 57-40.3-04 of the North Dakota Century Code is amended and reenacted as follows:

3. Motor carrier vehicles in excess of twenty thousand pounds [9071.85 kilograms] gross weight, whether owned or leased, engaged in interstate commerce but only to the extent their fleet miles outside North Dakota bear to their total fleet miles. For the purposes of this

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<sup>177</sup> Section 57-40.3-04 was also amended by section 1 of House Bill No. 1160, chapter 534, section 4 of House Bill No. 1393, chapter 513, and section 7 of Senate Bill No. 2101, chapter 450.

subsection, "fleet miles" means those miles reported in accordance with the international registration plan and must coincide with the mileage reporting period required by the plan. For the purposes of this subsection, "motor carrier vehicles" means any vehicles used upon public streets or highways for the purpose of transporting persons or property for commercial purposes. To claim this exemption, the motor carrier's vehicles must be both titled and registered in this state.

**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 12, 2007  
Filed April 13, 2007

**CHAPTER 338****HOUSE BILL NO. 1468**

(Representatives Gruchalla, Nottestad, Ruby)  
(Senators Freborg, Lyson, Warner)

**TEMPORARY OPERATOR PERMITS AFTER ALCOHOL TESTING**

AN ACT to amend and reenact section 39-20-03.1 of the North Dakota Century Code, relating to temporary operator permits after testing for alcohol.

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

**SECTION 1. AMENDMENT.** Section 39-20-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**39-20-03.1. Action following test result for a resident operator.** 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 an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two 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 if it is then available 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-five 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 director's official notification to the person of the director'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 director of the state crime laboratory or the director's designee and if the analysis shows that person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that person's reappearance within the officer's jurisdiction or notify a law enforcement agency having jurisdiction where the person lives. On that notification, that law enforcement agency shall immediately take possession of the person's North Dakota operator's license or permit if it is then available and, within twenty-four hours, forward the license and a copy of the temporary operator's permit to the law enforcement agency making the arrest or to the director. The 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. Alternatively, if the test results indicate an alcohol concentration at or above the legal limit, the law enforcement agency making the arrest may mail a temporary operator's permit to the person who submitted to the blood, urine, or saliva test. The third day after the mailing of the temporary operator's permit is considered the date of issuance. Within three days after the person receives the temporary operator's permit, the person shall mail the person's North Dakota operator's license to the law enforcement agency that made the arrest. Actual notice of the opportunity for a hearing under this section is deemed to have occurred seventy-two hours after the notice is mailed by regular mail to the address submitted by the person to the law enforcement officer. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.

3. The law enforcement officer, within five days of the issuance of the temporary operator's permit, shall forward to the director a certified written report in the form required by the director 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 results of a test, the 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 for alcohol concentration under this chapter, and that the results of the test show that the person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. In addition to the operator's license and report, the law enforcement officer shall forward to the director 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.

Approved March 6, 2007  
Filed March 7, 2007

**CHAPTER 339****HOUSE BILL NO. 1396**

(Representative Ruby)  
(Senator G. Lee)

**ALCOHOL CONCENTRATION DETERMINATION**

AN ACT to amend and reenact subsection 2 of section 20.1-13.1-10, subsection 4 of section 20.1-15-11, subsection 4 of section 39-20-07, and subsection 2 of section 39-24.1-08 of the North Dakota Century Code, relating to determination of alcohol concentration by breath testing.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 20.1-13.1-10 of the North Dakota Century Code is amended and reenacted as follows:

2. Alcohol concentration is based upon grams of alcohol per one hundred cubic centimeters of blood or grams of alcohol per two hundred ten liters of ~~alveolar air~~ end expiratory breath or grams of alcohol per sixty-seven cubic centimeters of urine.

**SECTION 2. AMENDMENT.** Subsection 4 of section 20.1-15-11 of the North Dakota Century Code is amended and reenacted as follows:

4. Alcohol concentration is based upon grams of alcohol per one hundred cubic centimeters of blood or grams of alcohol per two hundred ten liters of ~~alveolar air~~ end expiratory breath or grams of alcohol per sixty-seven cubic centimeters of urine.

<sup>178</sup> **SECTION 3. AMENDMENT.** Subsection 4 of section 39-20-07 of the North Dakota Century Code is amended and reenacted as follows:

4. Alcohol concentration is based upon grams of alcohol per one hundred milliliters of blood or grams of alcohol per two hundred ten liters of ~~alveolar air~~ end expiratory breath or grams of alcohol per sixty-seven milliliters of urine.

**SECTION 4. AMENDMENT.** Subsection 2 of section 39-24.1-08 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>178</sup> Section 39-20-07 was also amended by section 5 of House Bill No. 1069, chapter 325.

2. Alcohol concentration is based upon grams of alcohol per one hundred cubic centimeters of blood or grams of alcohol per two hundred ten liters of ~~alveolar air~~ end expiratory breath or grams of alcohol per sixty-seven cubic centimeters of urine.

Approved March 23, 2007  
Filed March 23, 2007

**CHAPTER 340****HOUSE BILL NO. 1359**

(Representatives Belter, Aarsvold, D. Johnson)  
(Senators Klein, G. Lee)

**TRUCK REAR-END PROTECTION EXEMPTION**

AN ACT to create and enact a new section to chapter 39-21 of the North Dakota Century Code, relating to rear-end protection of trucks and trailers; to provide for a legislative council study; and to provide for a contingent effective date.

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

**SECTION 1.** A new section to chapter 39-21 of the North Dakota Century Code is created and enacted as follows:

**Exemption from rear-end protection requirements.** The superintendent of the highway patrol may not adopt or enforce any law or rule requiring rear-end protection on a rear-end dump truck or other rear unloading truck or trailer while being used for hauling agricultural and other farm products from a place of production or on a farm storage site to a place of processing or storage.

**SECTION 2. LEGISLATIVE COUNCIL - EXEMPTION FROM FEDERAL MOTOR CARRIER SAFETY REGULATIONS STUDY.** The legislative council shall consider studying, during the 2007-08 interim, federal motor carrier safety regulations and exemptions for interstate and intrastate transportation in relation to this state's laws and exemptions. This study shall include a review of any industry-specific applications of regulations and possible exemptions to current transportation activities within this state. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 3. CONTINGENT EFFECTIVE DATE.** Section 1 of this Act becomes effective on the earlier of October 1, 2008, or on approval of this state's application for exemption from rear-end protection requirements for vehicles in section 1 of this Act by the federal motor carrier safety administration, unless the superintendent of the highway patrol does not complete and submit an application for exemption for vehicles in section 1 of this Act by July 1, 2007, then section 1 of this Act becomes effective on August 1, 2007.

Approved April 24, 2007  
Filed April 25, 2007

**CHAPTER 341****SENATE BILL NO. 2148**

(Senators Nething, Heitkamp)  
(Representatives Ruby, Vigesaa)

**MOTOR VEHICLE DEALER LICENSEE PENALTIES**

AN ACT to amend and reenact sections 39-22-04, 39-22-06, 39-22-14, 39-22-15, 39-22-16, 39-22-17, 39-22-20, 39-22-21, 39-22-22, and 39-22-23 of the North Dakota Century Code, relating to penalties for motor vehicle dealer licensees.

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

**SECTION 1. AMENDMENT.** Section 39-22-04 of the North Dakota Century Code is amended and reenacted as follows:

**39-22-04. Grounds for denial, suspension, cancellation, or revocation of dealer's license.** The director may deny an application for a dealer's license or suspend, revoke, or cancel ~~such a~~ dealer's license after it has been granted for ~~the following reasons:~~

1. ~~For making~~ any material misstatement by an applicant in the application for the license.
2. ~~For any willful failure;~~ willfully failing to comply with the provisions of this chapter or with any rule ~~of regulation promulgated~~ adopted by the director.
3. ~~For;~~ knowingly permitting any person to sell or exchange, or offer or attempt to sell or exchange any motor vehicle except for the licensed motor vehicle dealer by whom the person is employed.
4. ~~For having violated any;~~ willfully violating a 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.~~
6. ~~For;~~ or having violated any state or federal law relating to alteration of odometers or vehicle identification number.

**SECTION 2. AMENDMENT.** Section 39-22-06 of the North Dakota Century Code is amended and reenacted as follows:

**39-22-06. Motor vehicle lots - Location.** A licensed dealer ~~as described in this chapter~~ may establish secondary motor vehicle lots ~~as may be necessary~~ in the conduct of the dealer's business ~~in an area not further removed than~~ within five miles [8.05 kilometers] ~~from~~ of the dealer's established place of business. Secondary lots must be identified as a part of the licensed dealer's operation with a sign displaying the name and telephone number of the licensed dealer. The sign must be at least thirty-two square feet [2.97 square meters] in size, contain the name of the dealership in letters at least ten inches [25.4 centimeters] high, and be clearly visible

from the street. ~~Motor vehicle dealers~~ A licensed dealer may not display vehicles except on ~~their~~ the dealer's primary and secondary lots or as otherwise permitted in this chapter. ~~Any~~ The department may assess a person violating this section ~~must be assessed~~ a one hundred dollar fee by the department for a first violation and, a two hundred dollar fee by the department for a second violation within two years of the first violation. The department shall ~~suspend the license of a motor vehicle dealer licensed under this chapter if~~ assess a fee of at least five hundred dollars but not more than two thousand dollars for a third or subsequent violation of this section ~~occurs~~ within five years of the first violation.

**SECTION 3. AMENDMENT.** Section 39-22-14 of the North Dakota Century Code is amended and reenacted as follows:

**39-22-14. Motor vehicle dealer license - Fees - Penalty.** ~~It is unlawful for any~~ A person ~~to~~ may not engage in the business of buying, selling, or exchanging of motor vehicles without possessing a current motor vehicle dealer license. A person may not advertise or otherwise hold out to the public as engaging in the buying, selling, or exchanging of motor vehicles for resale without possession of a current new motor vehicle dealer license or used motor vehicle dealer license. The motor vehicle dealer license fee is one hundred dollars per year and ~~with~~ for which ~~must be issued~~ the department shall issue one dealer plate. A ~~The~~ applicant for an initial new or used motor vehicle dealer license shall submit a nonrefundable fee of one hundred dollars ~~must be charged~~ for the initial inspection of an ~~with~~ the application for a dealer license and ~~must accompany the initial application for a new or used motor vehicle dealer license.~~ The applicant shall provide the business's federal employer identification number or, in the case of an application from an individual, social security number. ~~Any~~ The department may assess a person violating a provision of this section ~~must be assessed~~ a one hundred dollar fee by the department for a first violation and, a two hundred dollar fee by the department for a second violation within two years of the first violation. ~~The department must suspend the license of a motor vehicle dealer licensed under this chapter if,~~ or a fee of at least five hundred dollars but not more than two thousand dollars for a third or subsequent violation of this section ~~occurs~~ within five years of the first violation. Any person not licensed as a dealer under this section who has been previously found to be in violation of this section, and assessed the fees specified, is guilty of a class B misdemeanor if a third or subsequent violation occurs.

**SECTION 4. AMENDMENT.** Section 39-22-15 of the North Dakota Century Code is amended and reenacted as follows:

**39-22-15. Established place of business - Penalty.**

1. A dealer license may not be issued until the applicant furnishes proof satisfactory to the director that the applicant has, does, and will continue to maintain in North Dakota an established place of business adjacent to the primary motor vehicle display lot maintained by the dealer. An established place of business means a permanent enclosed building of at least two hundred fifty square feet [23.22 square meters] either owned, rented, or leased at which a permanent business of bartering, trading, and selling of motor vehicles will be conducted and does not mean a residence, tents, temporary stands, or other temporary quarters. The established place of business and primary motor vehicle display lot must cover at least two thousand five hundred square feet [232.26 square meters] and be located on property zoned or otherwise approved for this purpose by the appropriate zoning authority. The established place of business must be adequately heated and lighted so

as to be comfortable for customers and employees and be equipped with standard office equipment necessary for the conduct of the business. All records related to the business, including titles or other documents showing ownership of the vehicles, must be kept and maintained at the established place of business.

2. An established place of business must have a telephone publicly listed in the name of the dealership, be open to the public during normal business hours, and have a sign identifying the business to the public as a motor vehicle dealership. The sign must be at least thirty-two square feet [2.97 square meters] in size, contain the name of the dealership in letters at least ten inches [25.4 centimeters] high, and be clearly visible from the street. A business sign approved by a motor vehicle manufacturer may be used in lieu of the sign requirements of this section.
3. If the licensee desires to move from the established place of business occupied when the license was granted to a new location, the licensee shall first secure from the director permission to do so. The licensee must furnish proof satisfactory to the director that the premises to which the licensee proposes to move conform with the requirements of this section. ~~Any~~
4. ~~The department may assess a person violating this section must be assessed a one hundred dollar fee by the department for a first violation and or a two hundred dollar fee by the department for a second violation within two years of the first violation. The department shall may~~ suspend the license of a motor vehicle dealer licensed under this chapter if a third or subsequent violation of this section occurs within five years of the first violation.

**SECTION 5. AMENDMENT.** Section 39-22-16 of the North Dakota Century Code is amended and reenacted as follows:

**39-22-16. Application for new motor vehicle dealer license - Franchise required - Selling vehicles without a franchise - Penalty.**

1. ~~In the case of~~ an application for a new motor vehicle dealer license, the applicant shall furnish proof satisfactory to the director that the applicant has a bona fide contract or franchise in effect with a manufacturer or distributor of the new motor vehicle or motor vehicles in which the dealer proposes to deal. A new motor vehicle dealer license entitles the holder to deal in both used motor vehicles and in those new motor vehicles only for which the dealer has a bona fide contract or franchise in effect with a manufacturer or distributor. A used motor vehicle dealer license entitles the holder to deal in used motor vehicles only.
2. New motor vehicle dealers who have been issued surrounding communities as a part of their dealer area of responsibility may be issued additional new motor vehicle dealer licenses if the manufacturer provides the department written approval of additional sites for display and sale of motor vehicles. Applicants for additional new car dealer licenses must meet all of the requirements of this chapter.
3. ~~Whenever~~ If a motor vehicle dealer purchases or holds for sale a new motor vehicle for which the dealer does not have a bona fide contract or

franchise in effect with a manufacturer or distributor, the new motor vehicle becomes, at the time of purchase or possession, subject to the registration provisions of chapter 39-04, the title registration provisions of chapter 39-05, and the motor vehicle excise tax provisions of chapter 57-40.3. ~~Any~~

4. ~~The department may assess a person violating this section must be assessed~~ a two hundred fifty dollar fee ~~by the department~~ for a first violation ~~and or~~ a five hundred dollar fee ~~by the department~~ for a second violation within two years of the first violation. The department ~~must may~~ suspend the license of a motor vehicle dealer licensed under this chapter if a third or subsequent violation of this section occurs within five years of the first violation.

<sup>179</sup> **SECTION 6. AMENDMENT.** Section 39-22-17 of the North Dakota Century Code is amended and reenacted as follows:

**39-22-17. Additional dealer plates - In-transit plates - Demonstration plates - Fees - Use of dealer plates - Penalty.**

1. Additional dealer number plates must be issued to the dealer upon payment of a fee of twenty-five dollars each. These number plates may be used on any vehicle owned by the dealership and used in the direct functions of demonstrating, buying, or selling vehicles. Dealer plates may not be used on a service vehicles vehicle or vehicles a vehicle used in other functions of the business, sold units in the possession of the purchaser, by family members not residing at the dealer's residence, or by ~~other persons~~ a person not directly involved in the operation of the dealership.
2. The director may issue to any dealer an in-transit license plate for a fee of five dollars per plate and a demonstration plate for a fee of five dollars per plate. A dealer in-transit plate may be used on vehicles in lieu of dealer's plates while a motor vehicle is in transit from its place of manufacture, or any other place, to the dealer or in transit from the dealer, by a direct route, to another destination.
3. A dealer demonstration plate may be used only on a vehicle which is owned by the dealership and being demonstrated to a customer. A dealer demonstration plate is valid for use only within a radius of one hundred miles [160.93 kilometers] of the dealer's established place of business. ~~Any~~
4. A dealer plate, in-transit plate, or demonstration plate displayed on a vehicle must be displayed on the rear of the vehicle. ~~Any~~
5. ~~The department may assess a person violating this section must be assessed~~ a one hundred dollar fee ~~by the department~~ for a first violation ~~and~~ a two hundred dollar fee ~~by the department~~ for a second violation within two years of the first violation: ~~The department shall suspend the~~

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<sup>179</sup> Section 39-22-17 was also amended by section 1 of Senate Bill No. 2111, chapter 342.



~~license of a motor vehicle dealer licensed under this chapter if, or a fee of at least five hundred dollars but not more than two thousand dollars for a third or subsequent violation of this section occurs within five years of the first violation.~~

**SECTION 7. AMENDMENT.** Section 39-22-20 of the North Dakota Century Code is amended and reenacted as follows:

**39-22-20. Display and sale of vehicles by out-of-state dealers - Offsite display and sale by instate dealers - Penalty.**

1. An out-of-state motor vehicle dealer who possesses a current motor vehicle dealer license from the dealer's home jurisdiction may participate in bona fide North Dakota automobile shows and sales promotions after obtaining a permit from the department. The permit must be issued upon the payment of a fee of one hundred dollars and is valid for a period of time, not to exceed seven days, to be determined by the department.
2. A motor vehicle dealer licensed under this chapter may participate in bona fide automobile shows and sales promotions in this state after obtaining a permit from the department. The permit must be issued upon the payment of a fee of twenty-five dollars and is valid for a period of time, not to exceed seven days, to be determined by the department.
3. The department shall deny an application for a permit if it determines the applicant does not intend to participate in a bona fide show or promotion. ~~Any~~
4. ~~The department may assess a person violating this section must be assessed a one hundred dollar fee by the department for a first violation and, a two hundred dollar fee by the department for a second violation within two years of the first violation. The department shall suspend the license of a motor vehicle dealer licensed under this chapter if, or a fee of at least five hundred dollars but not more than two thousand dollars for a third or subsequent violation of this section occurs within five years of the first violation.~~

**SECTION 8. AMENDMENT.** Section 39-22-21 of the North Dakota Century Code is amended and reenacted as follows:

**39-22-21. Consignment vehicles - Penalty.**

1. A motor vehicle dealer may sell a motor vehicle consigned to the dealer by a motor vehicle owner, except when the owner is a licensed motor vehicle dealer, under the terms of a consignment contract between the owner and the dealer. However, a motor vehicle dealer may sell a collector motor vehicle consigned to the dealer by an owner that is a licensed motor vehicle dealer. The consignment contract form must specify the terms of the agreement between the owner and the dealer, specify the location of the motor vehicle certificate of title, and must be approved by the department. ~~A~~
2. ~~The department may assess a person violating this section must be assessed a one hundred dollar fee by the department for a first violation and, a two hundred dollar fee by the department for a second violation~~

within two years of the first violation. ~~The department shall revoke the license of a motor vehicle dealer licensed under this chapter if, or a fee of at least five hundred dollars but not more than two thousand dollars for a third or subsequent violation of this section occurs within five years of the first violation.~~

**SECTION 9. AMENDMENT.** Section 39-22-22 of the North Dakota Century Code is amended and reenacted as follows:

**39-22-22. Operators of motor vehicle display lots - Permit required - Fee - Records required - Penalty.**

1. A person not licensed as a motor vehicle dealer may operate display lots on which the owner of a vehicle may display the vehicle for sale. The display lot must be located on property zoned or otherwise approved for this purpose by the appropriate zoning authority. The display lot operator must obtain an annual permit from the department to operate ~~such a~~ the lot. The annual fee for the permit is fifty dollars.
2. The display lot operator must provide the department with proof of a liability insurance policy with a minimum coverage of three hundred thousand dollars. The display lot must have a prominent sign identifying the business and the telephone number of the business owner. The sign must be at least thirty-two square feet [2.97 square meters] in size, contain the name of the display lot operator in letters at least ten inches [25.4 centimeters] high, and be clearly visible from the street.
3. The display lot operator, before providing space to a vehicle owner, must verify that the person renting the space is the owner of the displayed vehicle ~~that will be displayed~~ and keep records for at least one year ~~thereafter~~ after the rental of a space verifying compliance with this requirement. A licensed motor vehicle dealer ~~shall~~ may not be ~~permitted to operate a display lots except lot~~ on property that is ~~not otherwise~~ a part of the licensed dealership. The department may inspect the records of the display lot operator related to any complaint made against the operator. ~~Any~~
4. ~~The department may assess a person violating this section~~ must be assessed a one hundred dollar fee ~~by the department~~ for a first violation ~~and, a two hundred dollar fee by the department for a second violation within two years of the first violation. The department shall suspend the permit if, or a fee of at least five hundred dollars but not more than two thousand dollars for a third or subsequent violation of this section occurs within five years of the first violation.~~

**SECTION 10. AMENDMENT.** Section 39-22-23 of the North Dakota Century Code is amended and reenacted as follows:

**39-22-23. Auto auction operators - License required - Records required - Penalty.**

1. A person may not operate a wholesale or retail auto auction business without being licensed as a motor vehicle dealer. An auto auction operator must keep records related to the seller and purchaser of all vehicles sold through the operator's business for at least two years and

make those records available to the director or an authorized representative of the director upon reasonable request. ~~Any~~

2. The department may assess a person violating this section ~~must be assessed~~ a one hundred dollar fee ~~by the department~~ for a first violation and a two hundred dollar fee ~~by the department~~ for a second violation within two years of the first violation. The department ~~shall~~ may suspend the license of a motor vehicle dealer licensed under this chapter if a third or subsequent violation of this section occurs within five years of the first violation.

Approved April 9, 2007  
Filed April 10, 2007

**CHAPTER 342****SENATE BILL NO. 2111**

(Transportation Committee)

(At the request of the Department of Transportation)

**MOTOR VEHICLE DEALER PLATES**

AN ACT to amend and reenact section 39-22-17 of the North Dakota Century Code, relating to motor vehicle dealer plates.

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

<sup>180</sup> **SECTION 1. AMENDMENT.** Section 39-22-17 of the North Dakota Century Code is amended and reenacted as follows:

**39-22-17. Additional dealer plates - In-transit plates - Demonstration plates - Fees - Use of dealer plates - Penalty.** Additional dealer number plates must be issued to the dealer upon payment of a fee of ~~twenty-five~~ twenty dollars each. ~~These~~ A dealer number plates plate may be used on any vehicle owned by the dealership and used in the direct functions of demonstrating, buying, or selling vehicles. Dealer plates may not be used on service vehicles or vehicles used in other functions of the business, sold units in the possession of the purchaser, by family members not residing at the dealer's residence, or by other persons not directly involved in the operation of the dealership. ~~The director may issue to any dealer an in-transit license plate for a fee of five dollars per plate and a demonstration plate for a fee of five dollars per plate. A dealer in-transit plate may be used on vehicles in lieu of dealer's plates while a motor vehicle is in transit from its place of manufacture, or any other place, to the dealer or in transit from the dealer, by a direct route, to another destination. A dealer demonstration plate may be used only on a vehicle which is owned by the dealership and being demonstrated to a customer. A dealer demonstration plate is valid for use only within a radius of one hundred miles [160.93 kilometers] of the dealer's established place of business. Any dealer plate, in-transit plate, or demonstration plate displayed on a vehicle must be visibly displayed on the rear of the vehicle. Any person violating this section must be assessed a one hundred dollar fee by the department for a first violation and a two hundred dollar fee by the department for a second violation within two years of the first violation. The department shall suspend the license of a motor vehicle dealer licensed under this chapter if a third or subsequent violation of this section occurs within five years of the first violation.~~

Approved April 13, 2007

Filed April 16, 2007

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<sup>180</sup> Section 39-22-17 was also amended by section 6 of Senate Bill No. 2148, chapter 341.

## CHAPTER 343

### HOUSE BILL NO. 1465

(Representatives Hawken, Nelson, Weisz)  
(Senator Nething)

## MOTOR-POWERED RECREATIONAL VEHICLES

AN ACT to create and enact a new subsection to section 39-01-01 of the North Dakota Century Code, relating to the definition of motor-powered recreational vehicles; and to amend and reenact sections 39-22-05.1, 39-22.3-01, 39-22.3-02, 39-22.3-03, 39-22.3-04, 39-22.3-05, 39-22.3-06, 39-22.3-07, 39-22.3-08, 39-22.3-09, and 39-22.3-10 of the North Dakota Century Code, relating to deposit of dealer enforcement funds and the licensing of motor-powered recreational vehicle dealers.

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

<sup>181</sup> **SECTION 1.** A new subsection to section 39-01-01 of the North Dakota Century Code is created and enacted as follows:

"Motor-powered recreational vehicle" means a motorcycle, off-highway vehicle as defined in section 39-29-01, or a snowmobile as defined in section 39-24-01.

**SECTION 2. AMENDMENT.** Section 39-22-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**39-22-05.1. Disposition of fees.** Fees from registration of dealers and fees collected from dealers found in violation of this chapter must be deposited with the state treasurer, credited to the ~~motor vehicle registration~~ dealer enforcement fund, and used exclusively for enforcement of this chapter.

**SECTION 3. AMENDMENT.** Section 39-22.3-01 of the North Dakota Century Code is amended and reenacted as follows:

**39-22.3-01. ~~Motorcycle~~ Motor-powered recreational vehicle dealer's license - Fees - Additional number plates.** ~~It is unlawful for any A person, partnership, corporation, or limited liability company to~~ may not engage in the business of buying, selling, or exchanging of ~~motorcycles~~ motor-powered recreational vehicles without possessing a current ~~motorcycle~~ motor-powered recreational vehicle dealer's license. ~~No A person, partnership, corporation, or limited liability company may not~~ advertise or hold out to the public as engaging in the buying, selling, or exchanging of ~~motorcycles~~ motor-powered recreational vehicles for resale without possession of a current ~~motorcycle~~ motor-powered recreational vehicle dealer's license. The ~~motorcycle~~ motor-powered recreational vehicle dealer's license fee is twenty-five dollars per year and with which must be issued one dealer's plate. Additional dealer's plates are ten dollars each. A dealer

<sup>181</sup> Section 39-01-01 was also amended by section 1 of House Bill No. 1087, chapter 315.

plate may be displayed on any ~~motorcycle~~ motor-powered recreational vehicle owned by the dealer.

**SECTION 4. AMENDMENT.** Section 39-22.3-02 of the North Dakota Century Code is amended and reenacted as follows:

**39-22.3-02. Application required.** ~~No~~ A license may ~~not~~ not be granted unless a completed application has been made in the form prescribed by the director.

**SECTION 5. AMENDMENT.** Section 39-22.3-03 of the North Dakota Century Code is amended and reenacted as follows:

**39-22.3-03. Issuance of license - Conditions - Penalty.** ~~No~~ A license may ~~not~~ not be issued until the applicant furnishes proof satisfactory to the director that the applicant has and will continue to maintain an established place of business. An established central place of business means a permanent enclosed building or structure either owned or leased with a stated periodic rental, at which a permanent business of bartering, trading, and selling of ~~motorcycles~~ motor-powered recreational vehicles, the repair, maintenance, and servicing of ~~motorcycles~~ motor-powered recreational vehicles and the storage of parts and accessories ~~therefor~~, of motor-powered recreational vehicles will be carried out in good faith and not for the purpose of evading this section, and where the business books, records, and files ~~shall~~ must be maintained, and does not mean a residence, tents, temporary stands, or other temporary quarters, nor permanent quarters occupied pursuant to any temporary arrangement. ~~Said~~ The central place of business may consist of several buildings, or structures, but ~~no~~ a building or structure may ~~not~~ not be located beyond one thousand feet [304.8 meters] from any other buildings or structures of ~~said~~ the central place of business. ~~Such~~ The central place of business must be located within ~~the~~ this state of ~~North Dakota~~. The licensee must be permitted to use unimproved lots and premises for sales, storage, or display of ~~motorcycles~~ motor-powered recreational vehicles. A nonrefundable fee of fifty dollars will be charged for each inspection and must accompany each initial application for a ~~motorcycle~~ motor-powered recreational vehicle dealer's license. Any dealer violating this chapter must be assessed a one hundred dollar fee by the department for a first violation and a two hundred dollar fee by the department for a second violation within two years of the first violation. The department shall suspend the license of a ~~motorcycle~~ motor-powered recreational vehicle dealer licensed under this chapter if a third or subsequent violation of this chapter occurs within five years of the first violation.

**SECTION 6. AMENDMENT.** Section 39-22.3-04 of the North Dakota Century Code is amended and reenacted as follows:

**39-22.3-04. Grounds for denial, suspension, cancellation, or revocation of dealer's license.** The director may deny an application for a dealer's license or suspend, revoke, or cancel ~~such~~ a the 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 director.
3. For knowingly permitting any salesperson to sell or exchange, or offer or attempt to sell or exchange any ~~motorcycle~~ motor-powered recreational

vehicle except for the licensed ~~motorcycle~~ motor-powered recreational vehicle 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~~.

**SECTION 7. AMENDMENT.** Section 39-22.3-05 of the North Dakota Century Code is amended and reenacted as follows:

**39-22.3-05. Bond required.** The license applicant shall furnish a continuous surety bond executed by a surety company, licensed and qualified to do business within ~~the state of North Dakota, which this state and the~~ bond must run to the state of North Dakota in the amount of ten thousand dollars and be conditioned upon the faithful compliance by ~~said the~~ applicant with all the statutes of ~~the state of North Dakota this state~~, regulating or being applicable to a dealer in ~~motorcycles~~ motor-powered recreational vehicles, and indemnifying any person having a ~~motorcycle~~ motor-powered recreational vehicle transaction with ~~said the~~ dealer from any loss of damage occasioned by the failure of ~~such the~~ dealer to comply with any statutory requirement of ~~such the~~ transaction. The bond must be filed with the director ~~prior to~~ before the issuance of a license. The aggregate liability of the surety of all persons may ~~in no event not~~ exceed the amount of the bond. Any third party sustaining injury within the terms of the bond may proceed against the principal and surety without making the state a party of any ~~such~~ proceedings. The bond may be canceled by the surety, as to future liability, by giving written notice by certified mail, addressed to the principal at the address stated in the bond, and to the department. Thirty days after the mailing of the notice, the bond is null and void as to any subsequent liability thereafter arising. The surety remains liable, subject to the terms, conditions, and provisions of the bond, until the effective date of the cancellation.

**SECTION 8. AMENDMENT.** Section 39-22.3-06 of the North Dakota Century Code is amended and reenacted as follows:

**39-22.3-06. Disposition of fees.** Fees from registration of dealers must be deposited with the state treasurer and credited to the ~~highway tax distribution fund~~ dealer enforcement fund to be used exclusively for enforcement of this chapter.

**SECTION 9. AMENDMENT.** Section 39-22.3-07 of the North Dakota Century Code is amended and reenacted as follows:

**39-22.3-07. Dealer permitting license to be used by another dealer - License revoked - Penalty.** A dealer who permits any other dealer to use that first dealer's license, or permits the use of ~~such the~~ license for the benefit of any other dealer, is guilty of an infraction. The director shall revoke the license of any dealer who violates this section.

**SECTION 10. AMENDMENT.** Section 39-22.3-08 of the North Dakota Century Code is amended and reenacted as follows:

**39-22.3-08. Dealers to furnish information to director.** All dealers engaged in the sale of ~~motorcycles~~ motor-powered recreational vehicles in this state

shall furnish the director with ~~such~~ information as to models, specifications, selling prices, and ~~such~~ other data requested by the director as may be necessary in carrying out ~~the provisions~~ of this chapter.

**SECTION 11. AMENDMENT.** Section 39-22.3-09 of the North Dakota Century Code is amended and reenacted as follows:

**39-22.3-09. Powers of the director.** In addition to other powers provided by law, the director ~~has the following powers and duties which must be exercised~~ in conformity with this chapter:

1. ~~To~~ May cancel, revoke, or suspend a dealer's license as provided for in this chapter-;
2. ~~To~~ May prescribe rules not inconsistent with this chapter governing the application for dealer's licenses and the cancellation or suspension or revocation of a dealer's license-; and
3. ~~To~~ May employ and pay ~~such~~ persons ~~as the director may deem~~ necessary to inspect dealers in this state, investigate dealers for the information of the director, ~~to~~ and procure evidence in connection with any prosecution or other action to suspend, revoke, or cancel a dealer's license in relation to any matter in which the director has any duty to perform.

**SECTION 12. AMENDMENT.** Section 39-22.3-10 of the North Dakota Century Code is amended and reenacted as follows:

**39-22.3-10. Examination of books and records.** The director or the director's duly authorized representative may inspect the books, letters, records, and contracts of any licensed ~~motorcycle~~ motor-powered recreational vehicle dealer relating to any specific complaint made against ~~such~~ the dealer and held to be in violation of any ~~of the provisions~~ provision of this title.

Approved April 11, 2007  
Filed April 13, 2007



**CHAPTER 344****HOUSE BILL NO. 1362**

(Representatives Nelson, Boe, Damschen)

(Senators O'Connell, Olafson)

**OUT-OF-STATE SNOWMOBILE REGISTRATION FEES**

AN ACT to amend and reenact subsection 3 of section 39-24-04 of the North Dakota Century Code, relating to out-of-state snowmobile registration fees.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 39-24-04 of the North Dakota Century Code is amended and reenacted as follows:

3. If a snowmobile is exempt from registration under subdivision b or c of subsection 2, the owner is required to ~~display on the snowmobile a decal~~ purchase an out-of-state public trails and lands access permit received upon payment of a fifteen dollar per year ~~trail access~~ fee. The permit must be in the operator's possession when that individual is operating the snowmobile within the state. Dealers or other agents authorized by the director of the parks and recreation department who sell out-of-state public trails and lands access permits may retain one dollar of the fifteen dollar per year fee and the remainder of the fees collected under this subsection must be deposited in the state snowmobile fund.

Approved April 9, 2007  
Filed April 10, 2007

**CHAPTER 345****HOUSE BILL NO. 1089**

(Transportation Committee)

(At the request of the Department of Transportation)

**ABANDONED MOTOR VEHICLE FUND AND  
VEHICLES**

AN ACT to amend and reenact sections 39-26-12, 39-29.1-01, and 39-29.1-08 of the North Dakota Century Code, relating to the abandoned motor vehicle fund and low-speed vehicles.

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

**SECTION 1. AMENDMENT.** Section 39-26-12 of the North Dakota Century Code is amended and reenacted as follows:

**39-26-12. Tax on initial motor vehicle certificates of title- ~~When tax is suspended.~~** There is hereby imposed a tax of ~~two dollars~~ one dollar and fifty cents on each initial North Dakota certificate of title issued to a passenger motor vehicle or a truck motor vehicle. The proceeds of such tax must be paid into the abandoned motor vehicle disposal fund in the state treasury. No registration plates or title certificate may be issued unless such tax is paid. Expenses of the fund arising from the provisions of this chapter must be paid from the fund within the limits of legislative appropriation. If on the first day of July in any year the amount of uncommitted money in the abandoned motor vehicle disposal fund is two hundred fifty thousand dollars or more, the ~~tax must be suspended and the amount in excess of two hundred fifty thousand dollars must be transferred to the highway fund.~~ If the tax has been suspended and on the first day of July in any year the amount of uncommitted money in the abandoned motor vehicle disposal fund is one hundred thousand dollars or less the tax must be reimposed on and after January first of the succeeding year.

**SECTION 2. AMENDMENT.** Section 39-29.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**39-29.1-01. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Low-speed vehicle" means a four-wheeled vehicle that is able to attain a speed, upon a paved level surface, of more than twenty miles [32 kilometers] per hour in one mile [1.6 kilometers] and not more than twenty-five miles [40 kilometers] per hour in one mile [1.6 kilometers] and may not exceed one three thousand five hundred pounds [~~680-39~~ 1361 kilograms] in ~~unloaded~~ weight when fully loaded with passengers and any cargo.
2. "Operate" means to ride in or on and control the operation of a low-speed vehicle.
3. "Register" means the act of assigning a registration number to a low-speed vehicle.

**SECTION 3. AMENDMENT.** Section 39-29.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**39-29.1-08. Equipment.** A low-speed vehicle must be equipped with headlamps, front and rear turn signal lamps, taillamps, stop lamps, red reflex reflectors on each side as far to the rear of the vehicle as practicable and one red reflector on the rear, brakes, a parking brake, a windshield, a vehicle identification number, a safety belt assembly installed at each designated seating position, an exterior mirror mounted on the operator's side of the vehicle, and either an exterior mirror mounted on the passenger's side of the vehicle or an interior rearview mirror.

Approved April 13, 2007

Filed April 16, 2007

**CHAPTER 346****HOUSE BILL NO. 1183**

(Representatives Ruby, Bellew, Dietrich, Owens)

**MOTORCYCLE HANDLEBARS**

AN ACT to amend and reenact subsection 5 of section 39-27-06 of the North Dakota Century Code, relating to motorcycle handlebars.

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

**SECTION 1. AMENDMENT.** Subsection 5 of section 39-27-06 of the North Dakota Century Code is amended and reenacted as follows:

5. Handlebars must be of sturdy construction, adequate in size to provide proper leverage for steering, and capable of withstanding a minimum force of one hundred pounds [45.36 kilograms] applied to each handgrip in any direction. Handlebar grips ~~must~~ may not be located ~~no more than fifteen inches [38.1 centimeters] above the unoccupied seat with the handlebars located in a straight-ahead position above the shoulder~~ height of the seated operator and ~~shall~~ must be capable of vertical adjustment. The handlebars must provide a minimum of eighteen inches [45.72 centimeters] between grip after final assembly.

Approved March 23, 2007

Filed March 23, 2007

**CHAPTER 347****HOUSE BILL NO. 1205**

(Representatives Ruby, Dietrich, Owens)

**MOTORCYCLE LIGHTS**

AN ACT to amend and reenact sections 39-27-17 and 39-27-17.1 of the North Dakota Century Code, relating to motorcycle lights.

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

**SECTION 1. AMENDMENT.** Section 39-27-17 of the North Dakota Century Code is amended and reenacted as follows:

**39-27-17. Lighting equipment.**

1. ~~Every~~ A motorcycle must be equipped with lamps, reflective devices, and associated equipment as required by and in compliance with standards adopted by rule of the director.
2. A gearbox indicator light, if provided, must be located within the operator's field of vision.
3. A headlamp beam indicator light must be located within the operator's field of vision and illuminated automatically when the high beam of the headlamp is actuated.
4. A motorcycle must be equipped with at least one taillamp in accordance with section 39-21-04.
5. A motorcycle must be equipped with a stop lamp in accordance with subsection 1 of section 39-21-19.

**SECTION 2. AMENDMENT.** Section 39-27-17.1 of the North Dakota Century Code is amended and reenacted as follows:

**39-27-17.1. ~~Lighting equipment on motor-driven cycles~~ Headlamps on motorcycles.**

1. The headlamp or headlamps upon every motor-driven cycle may be of the single-beam or multiple-beam type ~~but in either event must comply with the requirements and limitations as follows:~~
4. 2. Every headlamp or headlamps on a motor-driven cycle must be of sufficient intensity to reveal a person or a vehicle at a distance of not less than one hundred feet [30.48 meters] when the motor-driven cycle is operated at any speed less than twenty-five miles [40.23 kilometers] per hour and at a distance of not less than two hundred feet [60.96 meters] when the motor-driven cycle is operated at a speed of twenty-five or more miles [40.23 or more kilometers] per hour, and at a distance of not less than three hundred feet [91.44 meters] when the motor-driven cycle is operated at a speed of thirty-five miles [56.33 kilometers] per hour.

- ~~2.~~ 3. In the event the motor-driven cycle is equipped with a multiple-beam headlamp or headlamps the upper beam must meet the minimum requirements set forth above and may not exceed the limitations set forth in subsection 1 of section 39-21-20 and the lowermost beam must meet the requirements applicable to a lowermost distribution of light as set forth in subsection 2 of section 39-21-20.
- ~~3.~~ 4. In the event the motor-driven cycle is equipped with a single-beam lamp or lamps the lamp or lamps must be so aimed that when the vehicle is loaded none of the high-intensity portion of light, at a distance of twenty-five feet [7.62 meters] ahead, projects higher than the level of the center of the lamp from which it comes.

Approved March 12, 2007  
Filed March 13, 2007

**CHAPTER 348****HOUSE BILL NO. 1445**

(Representatives Nelson, S. Meyer, Weisz)  
(Senators Andrist, Potter)

**OFF-HIGHWAY VEHICLE OPERATION AND  
EQUIPMENT**

AN ACT to create and enact a new section to chapter 39-29 of the North Dakota Century Code, relating to equipment of registered off-highway vehicles; and to amend and reenact subsection 1 of section 39-29-09 of the North Dakota Century Code, relating to the operation of off-highway vehicles.

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

**SECTION 1.** A new section to chapter 39-29 of the North Dakota Century Code is created and enacted as follows:

**Equipment.** To operate an off-highway vehicle on a paved highway or gravel, dirt, or loose surface roadway under subsection 1 of section 39-29-09, the off-highway vehicle must be equipped with a mirror in compliance with section 39-27-09, a horn in compliance with section 39-27-15, a speedometer and odometer in compliance with section 39-27-16, a brake light, a lighted headlamp in compliance with section 39-27-17.1, and a motor of at least three hundred fifty cubic centimeters.

**SECTION 2. AMENDMENT.** Subsection 1 of section 39-29-09 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual may not operate an off-highway 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, an individual may not operate an off-highway vehicle within the right of way of any controlled-access highway. An individual may operate a registered off-highway vehicle on a gravel, dirt, or loose surface roadway. An individual may operate a registered off-highway vehicle on a paved ~~county or township roadway if the off-highway vehicle is towing an implement of husbandry and does not exceed the speed of twenty-five miles [40.23 kilometers] per hour.~~ highway designated and posted at a speed not exceeding forty-five fifty-five miles [72.42 88.51 kilometers] per hour. A licensed driver over sixteen years of age may operate a registered class III off-highway vehicle on a paved highway designated and posted at a speed not exceeding sixty-five miles [104.61 kilometers] per hour.

Approved April 18, 2007  
Filed April 19, 2007

# MUNICIPAL GOVERNMENT

## CHAPTER 349

### HOUSE BILL NO. 1476

(Representatives Pietsch, Belter)  
(Senator G. Lee)

### GOLF CARTS ON STREETS

AN ACT to create and enact a new section to chapter 40-05 of the North Dakota Century Code, relating to golf carts on city streets.

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

**SECTION 1.** A new section to chapter 40-05 of the North Dakota Century Code is created and enacted as follows:

**Golf carts on city streets.** The governing body of a city may allow by an ordinance the operation of golf carts on the city streets. The ordinance may not allow a golf cart on federal, state, or county highways in the city, except for the perpendicular crossing of these highways. The ordinance may not allow the operation of a golf cart on city streets except for daytime travel between the owner's place of residence and a golf course. Golf carts that are allowed to operate on the city streets as the result of an ordinance are exempt from the title, registration, and equipment provisions of title 39.

Approved March 23, 2007

Filed March 23, 2007



**CHAPTER 350****SENATE BILL NO. 2236**

(Senator Dever)  
(Representative Potter)

**MUNICIPAL ELECTIONS**

AN ACT to amend and reenact sections 40-09-03 and 40-21-07 of the North Dakota Century Code, relating to municipal elections.

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

**SECTION 1. AMENDMENT.** Section 40-09-03 of the North Dakota Century Code is amended and reenacted as follows:

**40-09-03. Regulations governing election of commissioners.** The members of the board of city commissioners shall be elected at large and not by wards. Each voter may vote for one of the candidates for the office of president of the board of city commissioners and for as many candidates for the office of city commissioner as there are commissioners to be elected. Candidates for the city commission may run for either the office of city commissioner or the office of president of the board of city commissioners but not both in the same election.

**SECTION 2. AMENDMENT.** Section 40-21-07 of the North Dakota Century Code is amended and reenacted as follows:

**40-21-07. Petition for nomination of elective official in cities - Signatures required - Withdrawal of petition - Contents.** A candidate for any public office in an incorporated city may be nominated by filing with the city auditor, at least sixty days and before four p.m. on the sixtieth day before the holding of the election, a petition signed by not less than ten percent of the number of qualified electors who voted for that office in the last city election. A candidate shall also file a statement of interests as required by section 16.1-09-02. If multiple candidates were elected to the office at the preceding city election at which the office was voted upon, the number of signatures must equal at least ten percent of the total votes cast for all candidates divided by the number of candidates that were to be elected to that office at that election. Qualified electors who sign a petition must reside within the ward or precinct in and for which that officer is to be elected, if the election is by wards, or within the corporate limits of the city, if the officer is elected at large. In cities operating under the commission system of government the required petition may be signed by the qualified electors at large residing within the city. If a petition is mailed, it must be in the possession of the city auditor before four p.m. on the sixtieth day prior to the holding of the election. However, no more than three hundred signatures may be required and the signatures may be on separate sheets of paper. Petitions must meet the specifications of nominating petitions pursuant to section 16.1-11-16. If a city election is not combined with a state or county election according to section 40-21-02, a candidate may be nominated by filing the required petition with the city auditor at least ~~thirty-three~~ sixty days and before four p.m. on the ~~thirty-third~~ sixtieth day before the holding of the election. A candidate may withdraw the candidate's nominating petition at any time before the applicable deadlines for filing nominating petitions provided for in this section. Nominating petitions required by this section may not be circulated or signed more than ninety days before the date when nominating petitions must be filed pursuant to this section. Any signatures to a

nominating petition obtained more than ninety days before that date may not be counted. Candidates for city council may run for either the office of mayor or council member but not both in the same election. Candidates for the city commission may run for either the office of city commissioner or the office of president of the board of city commissioners but not both in the same election.

Approved April 13, 2007  
Filed April 16, 2007

## CHAPTER 351

### HOUSE BILL NO. 1321

(Representatives Wrangham, Damschen, S. Meyer)  
(Senators Heitkamp, O'Connell, Triplett)

## CITY EXTRATERRITORIAL ZONING

AN ACT to amend and reenact sections 40-47-01.1, 40-47-06, and 40-48-03 of the North Dakota Century Code, relating to extraterritorial zoning jurisdiction of cities; to provide for a legislative council study; to provide for application; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 40-47-01.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **40-47-01.1. Extraterritorial zoning - Mediation - Determination by administrative law judge.**

1. A city may, by ordinance, extend the application of a city's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance of the corporate limits of the city:
  - a. ~~One~~ One-half mile [1.61 kilometers] ~~.80 kilometer~~ if the city has a population of ~~less~~ fewer than five thousand.
  - b. ~~Two miles [3.22 kilometers]~~ One mile [1.61 kilometers] if the city has a population of five thousand or more, but ~~less~~ fewer than twenty-five thousand.
  - c. ~~Four miles [6.44 kilometers]~~ Two miles [3.22 kilometers] if the city has a population of twenty-five thousand or more.
2. Subject to subsections 5 and 6, a city, by ordinance, may extend the application of the city's zoning regulations to two times the distance allowed under subdivisions a, b, and c of subsection 1 if the extension is approved by at least five of six members of a committee established to review the proposed extension. The committee must consist of three members appointed by the governing body of the city and three members appointed, jointly, by the governing bodies of any political subdivision that is exercising zoning authority within the territory to be extraterritorially zoned.
3. If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the majority of the platted lot lies outside the quarter quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.

- ~~3-~~ 4. A city exercising its extraterritorial zoning authority shall hold a zoning transition meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning or planning commission shall provide at least fourteen days' notice of the meeting to the zoning board or boards of all political subdivisions losing their partial zoning authority. The purpose of the zoning transition meeting is to review existing zoning rules, regulations, and restrictions currently in place in the territory to be extraterritorially zoned and to plan for an orderly transition. The zoning transition meeting must take place before the city's adoption of an ordinance exercising extraterritorial zoning.
- ~~4-~~ 5. If two or more cities have boundaries at a distance where there is an overlap of extraterritorial zoning authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial zoning authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial zoning authority of a city and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.
- ~~5-~~ 6. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 4 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed extraterritorial zoning, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:

- a. The proportional extraterritorial zoning authority of the cities involved in the dispute;
  - b. The proximity of the land in dispute to the corporate limits of each city involved;
  - c. The proximity of the land in dispute to developed property in the cities involved;
  - d. Whether any of the cities has exercised extraterritorial zoning authority over the disputed land;
  - e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;
  - f. The growth pattern of the cities involved in the dispute; and
  - g. Any other factor determined to be relevant by the administrative law judge.
- 6- 7. For purposes of this section, the population of a city must be determined by the last official regular or special federal census. If a city has incorporated after a census, the population of the city must be determined by a census taken in accordance with chapter 40-22.
- 7- 8. When a portion of the city is attached to the bulk of the city by a strip of land less than one hundred feet [30.48 meters] wide, that portion and strip of land must be disregarded when determining the extraterritorial zoning limits of the city. This subsection does not affect the ability of a city to zone land within its city limits.
- 8- 9. For the purposes of this section, a quarter quarter section shall be determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase "quarter quarter section" refers to the equivalent government lot.

**SECTION 2. AMENDMENT.** Section 40-47-06 of the North Dakota Century Code is amended and reenacted as follows:

**40-47-06. Zoning commission - Appointment - Duties - Preliminary and final report.** The governing body of a city desiring to avail itself of the powers conferred by this chapter shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. ~~In addition to the members appointed by the city~~ If the city exercises extraterritorial zoning authority under section ~~40-47-01.1~~, the zoning commission ~~shall~~ must include at least one ~~person~~ individual residing outside of the corporate limits of a city ~~having if the city has a population of less fewer than five thousand, two persons~~ individuals residing outside the corporate limits of a ~~the city having if the city has a population of five thousand or more, but less fewer than twenty-five thousand, or three persons~~ individuals residing outside the corporate limits of a ~~the city having if the city has a population of twenty-five thousand or more if zoning authority is exercised pursuant to section 40-47-01.1.~~ Such persons shall. Those individuals must be appointed by the board or boards of county commissioners of the county or counties within which ~~such the~~ zoning authority is to be exercised and ~~shall~~ must reside within the territorial limits of the zoning regulation authority exercised by the city, if any such persons are individual is

available and will serve on the zoning commission. Of the members of the commission appointed by a board or boards of county commissioners pursuant to this section, the first member appointed shall hold office for five years, the second member appointed shall hold office for three years, and the third member appointed shall hold office for one year. Thereafter, the members shall be appointed for terms of five years. ~~Such~~ The commission shall make a preliminary report and hold public hearings thereon before submitting its final report. The governing body ~~shall~~ may not hold its public hearings or take action until it has received the final report of the zoning commission. If a city has a planning commission, it may be appointed as the zoning commission.

**SECTION 3. AMENDMENT.** Section 40-48-03 of the North Dakota Century Code is amended and reenacted as follows:

**40-48-03. Planning commission - Creation - Members - Ex officio members.** The governing body of any city may create, by ordinance, a planning commission to consist of not more than ten members to be appointed by the executive officer of the city with the approval of its governing body. ~~In addition to the members appointed by the city~~ If the city exercises extraterritorial zoning authority under section 40-47-01.1, the planning commission shall must include at least one person individual residing outside of the corporate limits of a the city having if the city has a population of less fewer than five thousand, two persons individuals residing outside the corporate limits of a if the city having has a population of five thousand or more, but less fewer than twenty-five thousand, or three persons individuals residing outside the corporate limits of a the city having if the city has a population of twenty-five thousand or more if zoning authority is exercised pursuant to section 40-47-01.1. Such persons shall. Those individuals must be appointed by the board or boards of county commissioners of the county or counties within which ~~such~~ the subdivision authority is to be exercised and ~~shall~~ must reside within the territorial limits of the subdivision regulation authority exercised by the city, if any such ~~persons are~~ individual is available and will serve on the planning commission. Of the members of the commission appointed by a board or boards of county commissioners pursuant to this section, the first member appointed shall hold office for five years, the second member appointed shall hold office for three years, and the third member appointed shall hold office for one year. Thereafter, the members shall be appointed for terms of five years. The executive officer, the engineer, and the attorney of the city ~~shall be~~ are ex officio members of the commission.

**SECTION 4. LEGISLATIVE COUNCIL STUDY - EXTRATERRITORIAL ZONING AUTHORITY.** The legislative council shall consider studying, during the 2007-08 interim, the extraterritorial zoning authority of cities and the impact of that authority on other political subdivisions. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 5. APPLICATION.** Any extraterritorial zoning regulation in effect before May 1, 2007, which extends beyond the extraterritorial zoning authority provided by this Act is not affected by the reduction in the extraterritorial zoning limits in section 1 of this Act.

**SECTION 6. EXPIRATION DATE.** Sections 1 through 3 of this Act are effective through July 31, 2009, and after that date are ineffective.

Approved May 2, 2007  
Filed May 3, 2007

**CHAPTER 352****SENATE BILL NO. 2349**

(Senators Tollefson, Andrist, Krebsbach)

(Representatives Bellew, Wrangham)

**MEDAL OF HONOR MONUMENT**

AN ACT to provide for ownership and maintenance for the medal of honor monument; and to provide an appropriation for the medal of honor monument.

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

**SECTION 1. Medal of honor monument.** Upon completion of the medal of honor monument in Roosevelt park in Minot, ownership and responsibility for the monument's maintenance belongs to the Minot park board or its successor.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$30,000, or so much of the sum as may be necessary, to the state historical society for the purpose of constructing a monument in Roosevelt park in Minot to honor recipients of the medal of honor, for the biennium beginning July 1, 2007, and ending June 30, 2009.

Approved May 4, 2007

Filed May 4, 2007

**CHAPTER 353****HOUSE BILL NO. 1225**

(Representatives Keiser, N. Johnson)  
(Senator Grindberg)

**RENAISSANCE ZONE SIZE AND BOUNDARIES**

AN ACT to amend and reenact subsection 1 of section 40-63-03 of the North Dakota Century Code, relating to a renaissance zone size and boundary.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 40-63-03 of the North Dakota Century Code is amended and reenacted as follows:

1. A city may apply to the department of commerce division of community services to designate a portion of that city as a renaissance zone if the following criteria are met:
  - a. The geographic area proposed for the renaissance zone is located wholly within the boundaries of the city submitting the application.
  - b. The application includes a development plan.
  - c. The proposed renaissance zone is not more than ~~twenty~~ twenty-three square blocks, except in a city with a population of greater than five thousand the renaissance zone may exceed ~~twenty~~ twenty-three square blocks at the rate of one additional block for each additional five thousand population to a maximum size of ~~thirty-five~~ thirty-eight blocks. Population is based upon the most recent federal decennial census.
  - d. ~~The~~ Except as provided under subdivision g, the proposed renaissance zone has a continuous boundary and all blocks are contiguous.
  - e. The proposed land usage includes both commercial and residential property.
  - f. The application includes the proposed duration of renaissance zone status, not to exceed fifteen years.
  - g. The proposed renaissance zone may have a single exception to the continuous boundary and contiguous block requirements under subdivision d if the area of the excepted noncontiguous blocks does not exceed three square blocks and if the shortest distance between the noncontinuous boundaries of the two portions of the zone does not exceed one-half mile [.80 kilometer].

Approved March 23, 2007  
Filed March 23, 2007



# UNIFORM COMMERCIAL CODE

## CHAPTER 354

### HOUSE BILL NO. 1035

(Legislative Council)  
(Judiciary Committee)

## UNIFORM COMMERCIAL CODE - GENERAL PROVISIONS

AN ACT to create and enact a new chapter 41-01 of the North Dakota Century Code, relating to Uniform Commercial Code Article 1 - General Provisions; to amend and reenact subdivision b of subsection 2 of section 9-16-02, subsection 4 of section 9-16-15, subsection 51 of section 10-19.1-01, subsection 56 of section 10-32-02, subsection 34 of section 10-33-01, subdivision b of subsection 1 of section 41-02-03, subsection 1 of section 41-02-09, subsection 3 of section 41-02.1-03, subsection 4 of section 41-02.1-49, subsection 2 of section 41-02.1-66, subsection 1 of section 41-02.1-67, subsection 2 of section 41-02.1-75, subsection 1 of section 41-02.1-76, subdivisions d and j of subsection 1 of section 41-03-03, subsection 3 of section 41-04-04, subsection 1 of section 41-04.1-05, subsection 1 of section 41-04.1-06, subsection 2 of section 41-04.1-12, subdivision g of subsection 1 of section 41-05-02, subsection 3 of section 41-05-03, subdivision k of subsection 1 of section 41-08-02, subdivision ss of subsection 1 of section 41-09-02, subsection 40 of section 45-10.2-02, subsection 26 of section 45-13-01, subsection 24 of section 45-22-01, subsection 24 of section 45-23-01, and section 47-15.1-02 of the North Dakota Century Code, relating to chapter 41-01 and references to chapter 41-01; and to repeal chapter 41-01 and sections 41-02-15 and 41-02.1-16 of the North Dakota Century Code, relating to Uniform Commercial Code general provisions, contracts, and leases.

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

**SECTION 1. AMENDMENT.** Subdivision b of subsection 2 of section 9-16-02 of the North Dakota Century Code is amended and reenacted as follows:

- b. The Uniform Commercial Code other than ~~sections 41-01-07 and 41-01-16~~ section 41-01-20 and chapters 41-02 and 41-02.1; and

**SECTION 2. AMENDMENT.** Subsection 4 of section 9-16-15 of the North Dakota Century Code is amended and reenacted as follows:

4. Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section ~~41-01-14~~ 41-01-09, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under title 41, including, if the applicable statutory requirements under subsection 1 of section 41-03-28, section 41-07-30, or section 41-09-29 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title

has been duly negotiated, or a purchaser, respectively. Delivery, possession, and endorsement are not required to obtain or exercise any of the rights under this subsection.

<sup>182</sup> **SECTION 3. AMENDMENT.** Subsection 51 of section 10-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

51. "Signed" means:

- a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the record, is placed on a record; ~~as provided under section 41-01-14~~ with the present intention to authenticate that record; and
- b. With respect to a record required by this chapter to be filed with the secretary of state, that:
  - (1) The record is signed by a person authorized to do so by this chapter, the articles or bylaws, or a resolution approved by the directors as required under section 10-19.1-46 or the shareholders as required under section 10-19.1-74; and
  - (2) The signature and the record are communicated by a method or medium of communication acceptable by the secretary of state.

<sup>183</sup> **SECTION 4. AMENDMENT.** Subsection 56 of section 10-32-02 of the North Dakota Century Code is amended and reenacted as follows:

56. "Signed" means:

- a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the record, is placed on a record; ~~as provided under section 41-01-14~~ with the present intention to authenticate that record.
- b. With respect to a record required by this chapter to be filed with the secretary of state, that:
  - (1) The record has been signed by a person authorized to do so by this chapter, the articles of organization, a member-control agreement, or the bylaws or a resolution approved by the governors as required by section 10-32-83 or the members as required by section 10-32-42; and

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<sup>182</sup> Section 10-19.1-01 was also amended by section 2 of House Bill No. 1241, chapter 101.

<sup>183</sup> Section 10-32-02 was also amended by section 38 of House Bill No. 1241, chapter 101.

- (2) The signature and the record are communicated by a method or medium acceptable by the secretary of state.

<sup>184</sup> **SECTION 5. AMENDMENT.** Subsection 34 of section 10-33-01 of the North Dakota Century Code is amended and reenacted as follows:

34. "Signed" means:

- a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the record, is placed on a record, ~~as provided under section 41-01-14~~ with the present intention to authenticate that record; and
- b. With respect to a record required by this chapter to be filed with the secretary of state, that:
  - (1) The record is signed by a person authorized to do so by this chapter, the articles, or bylaws, a resolution approved by the directors as required by section 10-33-42, or the members with voting rights, if any, as required by section 10-33-72; and
  - (2) The signature and the record are communicated by a method or medium of communication acceptable by the secretary of state.

**SECTION 6.** Chapter 41-01 of the North Dakota Century Code is created and enacted as follows:

Part 1  
General Provisions

**41-01-01. (1-101) Short titles.**

1. This title may be cited as the Uniform Commercial Code.
2. This chapter may be cited as Uniform Commercial Code - General Provisions.

**41-01-02. (1-102) Scope of chapter.** This chapter applies to a transaction to the extent that the transaction is governed by another chapter of this title.

**41-01-03. (1-103) Construction of title to promote the title's purposes and policies - Applicability of supplemental principles of law.**

1. This title must be liberally construed and applied to promote the title's underlying purposes and policies, which are:

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<sup>184</sup> Section 10-33-01 was also amended by section 59 of House Bill No. 1241, chapter 101.

- a. To simplify, clarify, and modernize the law governing commercial transactions;
  - b. To permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and
  - c. To make uniform the law among the various jurisdictions.
2. Unless displaced by the particular provisions of this title, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause supplement this title.

**41-01-04. (1-104) Construction against implied repeal.** This title is a general act intended as a unified coverage of its subject matter. A part of this title may not be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

**41-01-05. (1-105) Severability.** If any provision or clause of this title or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

**41-01-06. (1-106) Use of singular and plural - Gender.** In this title, unless the statutory context otherwise requires:

1. Words in the singular number include the plural, and those in the plural include the singular; and
2. Words of any gender also refer to any other gender.

**41-01-07. (1-107) Section captions.** Section captions are part of this title.

**41-01-08. (1-108) Relation to Electronic Signatures in Global and National Commerce Act.** This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act [Pub. L. 106-229; 114 Stat. 464; 15 U.S.C. 7001 et seq.] but does not modify, limit, or supersede section 101(c) of that Act [15 U.S.C. 7001(c)] or authorize electronic delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. 103(b)].

Part 2  
General Definitions and Principles of Interpretation

**41-01-09. (1-201) General definitions.**

1. Unless the context otherwise requires, words or phrases defined in this section, or in additional definitions contained in other chapters of this title which apply to particular chapters or parts of chapters, have the meanings stated.
2. Subject to definitions contained in other chapters of this title which apply to particular chapters or parts of chapters:

- a. "Action", in the sense of a judicial proceeding, includes recoupment, counterclaim, setoff, suit in equity, and any other proceeding in which rights are determined.
- b. "Aggrieved party" means a party entitled to pursue a remedy.
- c. "Agreement", as distinguished from "contract", means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided under section 41-09-17.
- d. "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.
- e. "Bearer" means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.
- f. "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.
- g. "Branch" includes a separately incorporated foreign branch of a bank.
- h. "Burden of establishing" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.
- i. "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under chapter 41-02 may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
- j. "Conspicuous", with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is

"conspicuous" or not is a decision for the court. Conspicuous terms include the following:

- (1) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and
  - (2) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.
- k. "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes.
- l. "Contract", as distinguished from "agreement", means the total legal obligation that results from the parties' agreement as determined by this title as supplemented by any other applicable laws.
- m. "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.
- n. "Defendant" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.
- o. "Delivery", with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or chattel paper, means voluntary transfer of possession.
- p. "Document of title" means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.
- q. "Fault" means a default, breach, or wrongful act or omission.
- r. "Fungible goods" means:
- (1) Goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

- (2) Goods that by agreement are treated as equivalent.
- s. "Genuine" means free of forgery or counterfeiting.
- t. "Good faith", except as otherwise provided in chapter 41-05, means honesty in fact and the observance of reasonable commercial standards of fair dealing.
- u. "Holder" means:
- (1) The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;
  - (2) The person in possession of a document of title if the goods are deliverable either to bearer or to the order of the person in possession; or
  - (3) The person in control of a negotiable electronic document of title.
- v. "Insolvency proceeding" includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.
- w. "Insolvent" means:
- (1) Having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;
  - (2) Being unable to pay debts as they become due; or
  - (3) Being insolvent within the meaning of federal bankruptcy law.
- x. "Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.
- y. "Organization" means a person other than an individual.
- z. "Party", as distinguished from "third party", means a person that has engaged in a transaction or made an agreement subject to this title.
- aa. "Person" means an individual, a corporation, a business trust, an estate, a trust, a partnership, a limited liability company, an association, a joint venture, a government, a governmental subdivision, an agency, or an instrumentality, a public corporation, or any other legal or commercial entity.
- bb. "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered

or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered.

- cc. "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.
- dd. "Purchaser" means a person that takes by purchase.
- ee. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- ff. "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.
- gg. "Representative" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.
- hh. "Right" includes remedy.
- ii. "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to chapter 41-09. "Security interest" does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under section 41-02-46, but a buyer may also acquire a "security interest" by complying with chapter 41-09. Except as otherwise provided in section 41-02-53, the right of a seller or lessor of goods under chapter 41-02 or 41-02.1 to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with chapter 41-09. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under section 41-02-46 is limited in effect to a reservation of a "security interest". Whether a transaction in the form of a lease creates a "security interest" is determined under section 41-01-11.
- jj. "Send" in connection with a writing, record, or notice means:
- (1) To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified on the instrument or otherwise agreed, or if there be none to any address reasonable under the circumstances; or
  - (2) In any other way to cause to be received any record or notice within the time it would have arrived if properly sent.
- kk. "Signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing.



- ll. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- mm. "Surety" includes a guarantor or other secondary obligor.
- nn. "Term" means a portion of an agreement that relates to a particular matter.
- oo. "Unauthorized signature" means a signature made without actual, implied, or apparent authority. The term includes a forgery.
- pp. "Warehouse receipt" means a document of title issued by a person engaged in the business of storing goods for hire.
- qq. "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

**41-01-10. (1-202) Notice - Knowledge.**

1. Subject to subsection 6, a person has "notice" of a fact if the person:
  - a. Has actual knowledge of that fact;
  - b. Has received a notice or notification of that fact; or
  - c. From all the facts and circumstances known to the person at the time in question, has reason to know that that fact exists.
2. "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.
3. "Discover", "learn", or words of similar import refer to knowledge rather than to reason to know.
4. A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.
5. Subject to subsection 6, a person "receives" a notice or notification when:
  - a. It comes to that person's attention; or
  - b. It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.
6. Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if the organization maintains

reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

**41-01-11. (1-203) Lease distinguished from security interest.**

1. Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.
2. A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:
  - a. The original term of the lease is equal to or greater than the remaining economic life of the goods;
  - b. The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;
  - c. The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or
  - d. The lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.
3. A transaction in the form of a lease does not create a security interest merely because:
  - a. The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered;
  - b. The lessee assumes risk of loss of the goods;
  - c. The lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;
  - d. The lessee has an option to renew the lease or to become the owner of the goods;
  - e. The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

- f. The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.
- 4. Additional consideration is nominal if that consideration is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:
    - a. When the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or
    - b. When the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.
  - 5. The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered.

**41-01-12. (1-204) Value.** Except as otherwise provided in chapters 41-03, 41-04, and 41-05, a person gives value for rights if the person acquires the rights:

- 1. In return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection;
- 2. As security for, or in total or partial satisfaction of, a preexisting claim;
- 3. By accepting delivery under a preexisting contract for purchase; or
- 4. In return for any consideration sufficient to support a simple contract.

**41-01-13. (1-205) Reasonable time - Seasonableness.**

- 1. Whether a time for taking an action required under this title is reasonable depends on the nature, purpose, and circumstances of the action.
- 2. An action is taken seasonably if the action is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

**41-01-14. (1-206) Presumptions.** If this title creates a "presumption" with respect to a fact or provides that a fact is "presumed", the trier of fact shall find the existence of the fact unless and until evidence is introduced that supports a finding of the fact's nonexistence.

Part 3  
Territorial Applicability and General Rules

**41-01-15. Territorial applicability - Parties' power to choose applicable**

**law.**

1. Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement, this title applies to transactions bearing an appropriate relation to this state.
2. Where one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law, including the conflict of laws rules, so specified:
  - a. Rights of creditors against sold goods. Section 41-02-47.
  - b. Applicability of the chapter on leases. Sections 41-02.1-05 and 41-02.1-06.
  - c. Applicability of the chapter on bank deposits and collections. Section 41-04-02.
  - d. Governing law in the chapter on funds transfers. Section 41-04.1-38.
  - e. Letters of credit. Section 41-05-16.
  - f. Applicability of the chapter on investment securities. Section 41-08-10.
  - g. Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. Sections 41-09-21 through 41-09-27.

**41-01-16. (1-302) Variation by agreement.**

1. Except as otherwise provided in subsection 2 or elsewhere under this title, the effect of provisions of this title may be varied by agreement.
2. The obligations of good faith, diligence, reasonableness, and care prescribed under this title may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. If this title requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.
3. The presence in certain provisions of this title of the phrase "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

**41-01-17. (1-303) Course of performance - Course of dealing - Usage of trade.**

1. A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:
  - a. The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and
  - b. The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in the performance without objection.
2. A "course of dealing" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.
3. A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.
4. A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which the parties are engaged or of which the parties are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.
5. Except as otherwise provided in subsection 6, the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:
  - a. Express terms prevail over course of performance, course of dealing, and usage of trade;
  - b. Course of performance prevails over course of dealing and usage of trade; and
  - c. Course of dealing prevails over usage of trade.
6. Subject to section 41-02-16, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.
7. Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

**41-01-18. (1-304) Obligation of good faith.** Every contract or duty within this title imposes an obligation of good faith in its performance and enforcement. This section does not support an independent claim for relief for failure to perform or enforce in good faith and does not create a separate duty of fairness and reasonableness which can be independently breached.

**41-01-19. (1-305) Remedies to be liberally administered.**

1. The remedies provided under this title must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided under this title or by other rule of law.
2. Any right or obligation declared under this title is enforceable by action unless the provision declaring the right or obligation specifies a different and limited effect.

**41-01-20. (1-306) Waiver or renunciation of claim or right after breach.**

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

**41-01-21. (1-307) Prima facie evidence by third-party documents.**

A document in due form purporting to be a bill of lading, a policy or certificate of insurance, an official weigher's or inspector's certificate, a consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of the document's own authenticity and genuineness and of the facts stated in the document by the third party.

**41-01-22. (1-308) Performance or acceptance under reservation of rights.**

1. A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest", or the like are sufficient.
2. Subsection 1 does not apply to an accord and satisfaction.

**41-01-23. (1-309) Option to accelerate at will.**

A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "deems itself insecure", or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

**41-01-24. (1-310) Subordinated obligations.**

An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate the creditor's right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

**SECTION 7. AMENDMENT.** Subdivision b of subsection 1 of section 41-02-03 of the North Dakota Century Code is amended and reenacted as follows:

- b. ~~"Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade. (Reserved).~~

**SECTION 8. AMENDMENT.** Subsection 1 of section 41-02-09 of the North Dakota Century Code is amended and reenacted as follows:

- 1. By course of ~~performance, course of dealing,~~ or usage of trade (section ~~41-01-15~~) ~~or by course of performance (section 41-02-15 41-01-17);~~ and

**SECTION 9. AMENDMENT.** Subsection 3 of section 41-02.1-03 of the North Dakota Century Code is amended and reenacted as follows:

- 3. The following definitions also apply to this chapter:
  - a. "Account". Section 41-09-02.
  - b. "Between merchants". Subsection 1 of section 41-02-04.
  - c. "Buyer". Subdivision a of subsection 1 of section 41-02-03.
  - d. "Chattel paper". Section 41-09-02.
  - e. "Consumer goods". Section 41-09-02.
  - f. "Document". Section 41-09-02.
  - g. "Entrusting". Subsection 3 of section 41-02-48.
  - h. "General intangible". Section 41-09-02.
  - i. ~~"Good faith". Subdivision b of subsection 1 of section 41-02-03.~~
  - j. "Instrument". Section 41-09-02.
  - ~~k.~~ j. "Merchant". Subsection 3 of section 41-02-04.
  - ~~l.~~ k. "Mortgage". Section 41-09-02.
  - ~~m.~~ l. "Pursuant to commitment". Section 41-09-02.
  - ~~n.~~ m. "Receipt". Subdivision c of subsection 1 of section 41-02-03.
  - ~~o.~~ n. "Sale". Subdivision d of subsection 1 of section 41-02-06.
  - ~~p.~~ o. "Sale on approval". Subdivision a of subsection 1 of section 41-02-43.
  - ~~q.~~ p. "Sale or return". Subdivision b of subsection 1 of section 41-02-43.
  - ~~r.~~ q. "Seller". Subdivision d of subsection 1 of section 41-02-03.

**SECTION 10. AMENDMENT.** Subsection 4 of section 41-02.1-49 of the North Dakota Century Code is amended and reenacted as follows:

4. Except as otherwise provided in under subsection 1 of section ~~41-01-06~~ 41-01-19, this chapter, or the lease agreement, the rights and remedies referred to in subsections 2 and 3 are cumulative.

**SECTION 11. AMENDMENT.** Subsection 2 of section 41-02.1-66 of the North Dakota Century Code is amended and reenacted as follows:

2. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 41-02.1-52) or determined by agreement of the parties (~~subsection 3 of section 41-01-02 and section sections 41-01-16 and 41-02.1-51~~), if a lessee's cover is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

**SECTION 12. AMENDMENT.** Subsection 1 of section 41-02.1-67 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 41-02.1-52) or determined by agreement of the parties (~~subsection 3 of section 41-01-02 and section sections 41-01-16 and 41-02.1-51~~), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under subsection 2 of section 41-02.1-66, or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

**SECTION 13. AMENDMENT.** Subsection 2 of section 41-02.1-75 of the North Dakota Century Code is amended and reenacted as follows:

2. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 41-02.1-52) or determined by agreement of the parties (~~subsection 3 of section 41-01-02 and section sections 41-01-16 and 41-02.1-51~~), if the disposition is by lease agreement substantially similar to the original lease agreement and the lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages accrued and unpaid rent as of the date of the commencement of the new term of the new lease agreement, the present value, as of the same date, of the total rent for the remaining lease term of the original lease agreement



minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and any incidental damages allowed under section 41-02.1-78, less expenses saved in consequence of the lessee's default.

**SECTION 14. AMENDMENT.** Subsection 1 of section 41-02.1-76 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 41-02.1-52) or determined by agreement of the parties (~~subsection 3 of section 41-01-02 and section sections 41-01-16 and 41-02.1-51~~), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and disposition is by lease agreement that for any reason does not qualify for treatment under subsection 2 of section 41-02.1-75, or is by sale or otherwise, the lessor may recover from the lessee as damages for a default described in subsection 1 of section 41-02.1-71 or in subdivision a of subsection 3 of section 41-02.1-71, or, if agreed, for other default of the lessee accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor; the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement; and any incidental damages allowed under section 41-02.1-78, less expenses saved in consequence of the lessee's default.

**SECTION 15. AMENDMENT.** Subdivisions d and j of subsection 1 of section 41-03-03 of the North Dakota Century Code are amended and reenacted as follows:

- d. ~~"Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.~~ (Reserved).
- j. "Prove" with respect to a fact means to meet the burden of establishing the fact (~~subdivision h of subsection 8 2 of section 41-01-14 41-01-09~~).

**SECTION 16. AMENDMENT.** Subsection 3 of section 41-04-04 of the North Dakota Century Code is amended and reenacted as follows:

3. "Control" as provided under section 41-07-06 and the following definitions in other chapters apply to this chapter:
  - a. "Acceptance". Section 41-03-46.
  - b. "Alteration". Section 41-03-44.
  - c. "Cashier's check". Section 41-03-04.
  - d. "Certificate of deposit". Section 41-03-04.

- e. "Certified check". Section 41-03-45.
- f. "Check". Section 41-03-04.
- g. ~~"Good faith". Section 41-03-03.~~
- h. "Holder in due course". Section 41-03-28.
- i. ~~h.~~ h. "Instrument". Section 41-03-04.
- j. ~~i.~~ i. "Notice of dishonor". Section 41-03-60.
- k. ~~j.~~ j. "Order". Section 41-03-03.
- l. ~~k.~~ k. "Ordinary care". Section 41-03-03.
- m. ~~l.~~ l. "Person entitled to enforce". Section 41-03-27.
- n. ~~m.~~ m. "Presentment". Section 41-03-58.
- o. ~~n.~~ n. "Promise". Section 41-03-03.
- p. ~~o.~~ o. "Prove". Section 41-03-03.
- q. ~~p.~~ p. "Teller's check". Section 41-03-04.
- r. ~~q.~~ q. "Unauthorized signature". Section 41-03-40.

**SECTION 17. AMENDMENT.** Subsection 1 of section 41-04.1-05 of the North Dakota Century Code is amended and reenacted as follows:

1. In this chapter:

- a. "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.
- b. "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this chapter.
- c. "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.
- d. "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

- e. "Funds-transfer system" means a wire transfer network, automated clearinghouse, or other communication system of a clearinghouse or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.
- f. ~~"Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing. (Reserved).~~
- g. "Prove" with respect to a fact means to meet the burden of establishing the fact. ~~Subsection 8~~ Subdivision h of subsection 2 of section 41-01-14 41-01-09.

**SECTION 18. AMENDMENT.** Subsection 1 of section 41-04.1-06 of the North Dakota Century Code is amended and reenacted as follows:

1. The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated ~~in subsection 27 of~~ under section 41-01-14 41-01-10. A receiving bank may fix a cutoff time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cutoff times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cutoff time may apply to senders generally or different cutoff times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cutoff time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

**SECTION 19. AMENDMENT.** Subsection 2 of section 41-04.1-12 of the North Dakota Century Code is amended and reenacted as follows:

2. Reasonable time under subsection 1 may be fixed by agreement under subsection 1 of section ~~41-01-14 41-01-16,~~ but the obligation of a receiving bank to refund payment as stated in subsection 1 may not otherwise be varied by agreement.

**SECTION 20. AMENDMENT.** Subdivision g of subsection 1 of section 41-05-02 of the North Dakota Century Code is amended and reenacted as follows:

- g. "Good faith" means honesty in fact in the conduct or transaction concerned. The definition of "good faith" in section 41-01-09 does not apply to this chapter.

**SECTION 21. AMENDMENT.** Subsection 3 of section 41-05-03 of the North Dakota Century Code is amended and reenacted as follows:

3. With the exception of this subsection, subsections 1 and 4 of this section, subdivisions i and j of subsection 1 of section 41-05-02, subsection 4 of section 41-05-06, and subsection 4 of section 41-05-14, and except to the extent prohibited ~~in subsection 3 of~~ under section 41-01-02 41-01-16 and subsection 4 of section 41-05-17, the effect of

this chapter may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this chapter.

**SECTION 22. AMENDMENT.** Subdivision k of subsection 1 of section 41-08-02 of the North Dakota Century Code is amended and reenacted as follows:

- k. ~~"Good faith", for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this chapter, means honesty in fact and the observance of reasonable commercial standards of fair dealing. (Reserved).~~

**SECTION 23. AMENDMENT.** Subdivision ss of subsection 1 of section 41-09-02 of the North Dakota Century Code is amended and reenacted as follows:

- ss. ~~"Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing. (Reserved).~~

<sup>185</sup> **SECTION 24. AMENDMENT.** Subsection 40 of section 45-10.2-02 of the North Dakota Century Code is amended and reenacted as follows:

40. "Signed" means:
  - a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the record, is placed on a record ~~as provided under section 41-04-14~~ with the present intention to authenticate that record; and
  - b. With respect to a record required by this chapter to be filed with the secretary of state that:
    - (1) The record is signed by a person authorized to sign the record by this chapter, by the partnership agreement, or by a resolution approved by the affirmative vote of the required proportion or number of partners; and
    - (2) The signature and the record are communicated by a method or medium of communication acceptable by the secretary of state.

<sup>186</sup> **SECTION 25. AMENDMENT.** Subsection 26 of section 45-13-01 of the North Dakota Century Code is amended and reenacted as follows:

26. "Signed" means:

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<sup>185</sup> Section 45-10.2-02 was also amended by section 68 of House Bill No. 1241, chapter 101.

<sup>186</sup> Section 45-13-01 was also amended by section 72 of House Bill No. 1241, chapter 101.

- a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically or in any other manner reproduced on the record, is placed on a record; ~~as provided under section 41-01-14~~ with the present intention to authenticate that record; and
- b. With respect to a record required by this chapter to be filed with the secretary of state, that:
  - (1) The record is signed by a person authorized to do so by this chapter or by a resolution approved by the affirmative vote of the required proportion or number of partners; and
  - (2) The signature and the record are communicated by a method or medium of communication acceptable by the secretary of state.

<sup>187</sup> **SECTION 26. AMENDMENT.** Subsection 24 of section 45-22-01 of the North Dakota Century Code is amended and reenacted as follows:

24. "Signed" means:

- a. That the signature of a person which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by telecommunication or electronically, or in any other manner reproduced on the record, is placed on a record; ~~as provided under section 41-01-14~~ with the present intention to authenticate that record; and
- b. With respect to a record required by this chapter to be filed with the secretary of state means that:
  - (1) The record is signed by a person authorized to do so by this chapter, or by or pursuant to an agreement among the partners, or by a resolution approved by the affirmative vote of the required proportion or number of partners; and
  - (2) The signature and the record are communicated by a method or medium of communication acceptable by the secretary of state.

<sup>188</sup> **SECTION 27. AMENDMENT.** Subsection 24 of section 45-23-01 of the North Dakota Century Code is amended and reenacted as follows:

24. "Signed" means:

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<sup>187</sup> Section 45-22-01 was also amended by section 75 of House Bill No. 1241, chapter 101.

<sup>188</sup> Section 45-23-01 was also amended by section 77 of House Bill No. 1241, chapter 101.

- a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the record, is placed on a record; ~~as provided under section 41-01-14~~ with the present intention to authenticate that record; and
- b. With respect to a record required by this chapter to be filed with the secretary of state, that:
  - (1) The record is signed by a person authorized to sign by this chapter, or pursuant to an agreement among the partners, or by a resolution approved by the affirmative vote of the required proportion or number of partners; and
  - (2) The signature and the record are communicated by a method or medium acceptable by the secretary of state.

**SECTION 28. AMENDMENT.** Section 47-15.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**47-15.1-02. Inapplicability of other laws.** Consumer rental purchase agreements under this chapter are not governed by the laws relating to a retail installment contract or a retail installment sale as defined in section 51-13-01 or security interest as defined in section ~~41-01-14~~ 41-01-09.

**SECTION 29. REPEAL.** Chapter 41-01 and sections 41-02-15 and 41-02.1-16 of the North Dakota Century Code are repealed.

Approved March 12, 2007  
Filed March 13, 2007

**CHAPTER 355****SENATE BILL NO. 2350**  
(Senators Freborg, Andrist, Triplett)  
(Representatives Dietrich, Thoreson, Vigesaa)**FRAUDULENT FINANCING STATEMENT FILING**

AN ACT to create and enact a new chapter to title 41 of the North Dakota Century Code, relating to filing fraudulent and harassing financing statement records; and to provide a penalty.

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

**SECTION 1.** A new chapter to title 41 of the North Dakota Century Code is created and enacted as follows:

**Definitions.** As used in this chapter:

1. "Authorized", when used with reference to a financing statement record, means that the financing statement record was filed by a person authorized to do so as provided in sections 41-09-80 and 41-09-130.
2. "Debtor" means a natural person whose name was provided in a financing statement record as an individual debtor or one of the types of persons listed in section 41-09-76.
3. "Filing office" or "filing officer" refers to the appropriate office or officer where a financing statement record is to be filed as provided by section 41-09-72, including the county recorder, the secretary of state, and other designated filing officers.
4. "Financing statement record" means an initial financing statement, an amendment that adds collateral covered by a financing statement, and an amendment that adds a debtor to a financing statement as such terms are used in chapter 41.

**Criminal penalty.**

1. A person commits an offense if the person knowingly causes to be presented for filing in a filing office, or promotes the filing in a filing office, of a financing statement record that the person knows:
  - a. Not to be authorized under section 41-09-80 or 41-09-130 by the natural person whose name was provided as an individual debtor in the financing statement; and
  - b. Was filed or presented for filing with the intent that:
    - (1) The financing statement record be used to harass or hinder the natural person whose name was provided as an individual debtor in the financing statement record without that person's authorization; or

- (2) The financing statement record be used to defraud any person.
2. An offense under this section is a class A misdemeanor, unless it is alleged and shown at the trial of the offense that the person had previously been convicted under this provision on two or more occasions, in which event the offense is a class C felony.

**Civil penalty.**

1. A person shall not knowingly cause to be presented for filing in a filing office or promote the filing of a financing statement record in a filing office that the person knows:
  - a. Not to be authorized under section 41-09-80 or 41-09-130 by the natural person whose name was provided as an individual debtor in the financing statement record; and
  - b. Was filed or presented for filing with the intent that:
    - (1) The financing statement record be used to harass or hinder the natural person whose name was provided as an individual debtor in the financing statement record without that person's authorization; or
    - (2) The financing statement record be used to defraud any person.
2. A person who violates subsection 1 is liable to each such debtor for:
  - a. The greater of ten thousand dollars or the actual damages caused by the violation;
  - b. Court costs;
  - c. Reasonable attorney's fees;
  - d. Related expenses of bringing the action, including investigative expenses; and
  - e. Exemplary damages in the amount determined by the court.

**Cause of action - Injunction.**

1. The following persons may bring an action to enjoin violation of this chapter or to recover civil damages under this chapter:
  - a. The natural person whose name was provided as an individual debtor in the financing statement record filed without that person's authorization under section 41-09-80, any person who owns an interest in the collateral described or indicated in the financing statement record, or any person directly harmed by the filing of the financing statement record;
  - b. The attorney general;



- c. A state's attorney;
  - d. A municipal attorney; and
  - e. A person who has been damaged as a result of an action taken in reliance on the filed financing statement record.
2. A filing officer may refer a matter to the attorney general or other appropriate person for filing the legal action under this chapter.

**Venue.** An action under this chapter may be brought in any district court in the county in which the financing statement record is presented for filing or in a county where any of the persons who may bring an action under this chapter reside.

**Other remedies.** This law is cumulative of other law under which a person may obtain judicial relief with respect to any filed or recorded document.

Approved April 4, 2007  
Filed April 5, 2007

# OCCUPATIONS AND PROFESSIONS

## CHAPTER 356

### SENATE BILL NO. 2119

(Political Subdivisions Committee)  
(At the request of the Abstracters' Board of Examiners)

### ABTRACTOR RECORDS

AN ACT to amend and reenact sections 43-01-09, 43-01-14, and 43-01-23 of the North Dakota Century Code, relating to licensed abstractor records.

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

**SECTION 1. AMENDMENT.** Section 43-01-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-01-09. Requirements of abstractor of title - Records - Certificate of registration bond or liability policy.** Before any person, firm, corporation, or limited liability company may engage in the business of making and compiling abstracts of title to real estate within this state, the person or it shall:

1. Have ~~for use and maintain~~ in such business a complete ~~set of abstract books or records of tract index~~ and all instruments of record in the office of the recorder in and for the county in which the person or it is engaged in business, or shall have been engaged in good faith in the preparation of such ~~books or records~~ for not less than six months;
2. Obtain a certificate of authority as is required by this chapter;
3. File the bond or abstractor's liability policy required under section 43-01-11; and
4. Have in charge of such business a registered abstractor, as defined by this chapter.

**SECTION 2. AMENDMENT.** Section 43-01-14 of the North Dakota Century Code is amended and reenacted as follows:

**43-01-14. Certification of authority - Fee - Renewal.** A certificate of authority must 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 fixed by the board not exceeding one hundred dollars, which must be in addition to the examination fee. A certificate is valid for five years after the date thereof. A certificate must be renewed by the board upon application, made within thirty days prior to the expiration date, accompanied by payment of a fee fixed by the board not exceeding one hundred dollars and an affidavit that the applicant has ~~for use and maintains~~ in the applicant's business a complete ~~set of abstract books or records of tract index~~ and all instruments of record in the office of the recorder in and for the county in which the applicant has the applicant's place of

business or has been engaged in good faith in the preparation of such ~~books or~~ records for not less than six months.

**SECTION 3. AMENDMENT.** Section 43-01-23 of the North Dakota Century Code is amended and reenacted as follows:

**43-01-23. Temporary authority of an abstractor to act in an additional county.**

1. If it appears to the board that there is no abstractor authorized to engage in and carry on the business of an abstractor of real estate titles in a county or that there is an authorized abstractor in a county who is unable to perform the duties of an abstractor due to death, disability, a disaster or emergency, or disciplinary action, the board may authorize an individual or organization having a certificate of authority and certificate of registration to operate in another county to operate in the county having no abstractor through the issuance of a temporary certificate of authority. The board may not charge an abstractor for the temporary certificate of authority. The board may require additional security than provided under section 43-01-11. The abstractor operating under the temporary certificate of authority is not required to have a complete ~~set of abstract books or records of tract index~~ and all instruments of record in the office of the recorder in and for the county in which the abstractor is temporarily engaged in business, nor need the abstractor have been engaged in the preparation of such ~~books or~~ records. The temporary certificate of authority may not exceed such time as the board has determined an abstractor having a regular certificate of authority and certificate of registration is able to engage in and carry on the business of an abstractor of real estate titles in the county, but the abstractor holding the temporary certificate of authority may complete any work already engaged. The abstractor having a temporary certificate of authority may seek to operate in the county on a regular basis through compliance with all statutory requirements.
2. The board may establish a fund to provide for additional expenses of an abstractor operating under a temporary certificate of authority. The fund may be paid for by an additional fee fixed by the board of no more than fifty dollars per year for each certificate of registration. The fund may not exceed five thousand dollars. The board may pay the expenses, including mileage, meals, and lodging, of an abstractor operating under a temporary certificate of authority at the rates established for state employees on official business.

Approved March 5, 2007

Filed March 6, 2007

**CHAPTER 357****SENATE BILL NO. 2217**

(Senator Holmberg)

**ABSTRACTER FEES AND STUDY**

AN ACT to amend and reenact section 43-01-18 of the North Dakota Century Code, relating to abstracter fees; and to provide for a legislative council study.

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

**SECTION 1. AMENDMENT.** Section 43-01-18 of the North Dakota Century Code is amended and reenacted as follows:

**43-01-18. Fees chargeable by abstracter.** An abstracter may charge no more than the following fees for making and certifying to an abstract:

1. For each entry on an abstract or continuation ~~thereof~~ of an entry on an abstract, six ten dollars.
2. For a complete certification covering the records of the several county offices, ~~seventy-five~~ one hundred 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 nine dollars,~~ and for each quarter section [64.75 hectares] or portion thereof of a quarter section in excess of one, may be charged an additional fee of ten dollars.
4. For a certification covering premises in more than one block in any subdivision in the same abstract of title, ~~an additional fee of nine dollars,~~ and for the premises in each additional block in excess of one, may be charged an additional fee of ten dollars.
5. For each name searched for judgments, real estate taxes, bankruptcy proceedings, federal tax liens, ~~and state tax liens, mechanics' liens and mechanics' lien notices,~~ three five dollars and fees charged to the abstracter by a governmental agencies agency or governmental entities entity.
6. ~~For all miscellaneous instruments, two dollars for the first one hundred words, and one dollar for each additional hundred words or fraction thereof.~~
7. The fees as may be fixed by special statute.

**SECTION 2. LEGISLATIVE COUNCIL STUDY - ABSTRACTERS, TITLE OPINIONS, AND TITLE INSURANCE.** The legislative council shall consider studying, during the 2007-08 interim, abstracters, title opinions, and title insurance, including a review of the orderly and efficient transfer of real property which provides adequate assurances of title. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Approved April 4, 2007

Filed April 5, 2007

**CHAPTER 358****HOUSE BILL NO. 1477**

(Representatives Kroeber, Hanson, Heller, Kreidt)  
(Senator Heitkamp)

**BARBERING PRACTICE**

AN ACT to create and enact a new section to chapter 43-04 of the North Dakota Century Code, relating to prohibited acts regarding the practice of barbering.

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

**SECTION 1.** A new section to chapter 43-04 of the North Dakota Century Code is created and enacted as follows:

**Deceptive acts - Barber poles.** A person may not advertise, hold out to the public, or represent in any manner that the person is authorized to practice barbering unless the person is authorized under this chapter to practice barbering or authorized to employ or lease space to a barber. A person not authorized to practice barbering or not authorized to employ or lease space to a barber may not place a barber pole in a location that would create or tend to create the impression to members of the general public that a business located near the barber pole is a barbershop unless the location of the barber pole is related to a business authorized to operate a barbershop. As used in this section, barber pole means a red, white, or blue striped vertical cylinder with a ball located on the top, bottom, or top and bottom of the cylinder, or any object or facsimile of similar nature, regardless of the actual shape or coloring, if the object or facsimile would tend to create an impression to members of the general public that a business located near the object is a barbershop.

Approved March 30, 2007  
Filed March 30, 2007

**CHAPTER 359****SENATE BILL NO. 2158**

(Senators Hacker, Heitkamp, J. Lee)  
(Representatives Carlson, Dietrich, Koppelman)

**CONTRACTOR LICENSING**

AN ACT to amend and reenact section 43-07-02, subsection 3 of section 43-07-04, section 43-07-10, and subsection 3 of section 43-07-14 of the North Dakota Century Code, relating to contractor licenses and unlicensed contractors.

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

**SECTION 1. AMENDMENT.** Section 43-07-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-07-02. License required.** A person may not engage in the business nor act in the capacity of a contractor within this state when the cost, value, or price per job exceeds the sum of two thousand dollars nor may that person maintain any claim, action, suit, or proceeding in any court of this state related to the person's business or capacity as a contractor without first having a license as provided in this chapter.

**SECTION 2. AMENDMENT.** Subsection 3 of section 43-07-04 of the North Dakota Century Code is amended and reenacted as follows:

3. No sooner than twenty days after sending written notice to a contractor at the contractor's last-known address, the registrar shall classify as not in good standing the license of any contractor who fails to:
  - a. Maintain liability insurance coverage required by this section or by section 43-07-10;
  - b. File, renew, or properly amend any fictitious name certificate required by chapter 45-11;
  - c. Maintain an active status of a corporation or registration as a foreign corporation;
  - d. Maintain an active status of a limited liability company or registration as a foreign limited liability company;
  - e. File or renew a trade name registration as required by chapter 47-25;
  - f. ~~File or renew~~ Maintain a limited liability partnership registration or foreign limited liability partnership registration as required by chapter 45-22; or
  - g. ~~File or renew~~ Maintain a limited partnership certificate of limited partnership or foreign limited partnership certificate of authority.

**SECTION 3. AMENDMENT.** Section 43-07-10 of the North Dakota Century Code is amended and reenacted as follows:

**43-07-10. Renewal of license - Grounds for nonrenewal - Time requirements - Invalidity of license for failure to renew.**

1. Any license issued under this chapter may be renewed for each successive fiscal year by obtaining from the registrar a certificate of renewal. To obtain a certificate of renewal, the licensee shall file with the registrar an application, which includes a listing of each project, contract, or subcontract completed by the licensee during the preceding calendar year in this state over the amount of twenty-five thousand dollars, the nature of the work of each project, contract, or subcontract, and, if a performance bond was required, the name and address of the person who issued the bond. The registrar shall within a reasonable time forward a copy of the list to the state tax commissioner. The applicant shall include with the application a copy of a certificate of liability insurance unless the registrar has a current valid certificate of insurance on file, and a certification that the applicant has submitted all payroll taxes, including North Dakota income tax, workforce safety and insurance premiums, and unemployment insurance premiums due at the time of renewal, which documents need not be notarized.
2. The registrar may refuse to renew a license if the registrar determines the application contains false, misleading, or incomplete information or if the contractor's license is not in good standing for any of the reasons listed in subsection 3 of section 43-07-04. The registrar shall notify the applicant in writing if the registrar does not grant the license and shall provide the applicant an opportunity to respond to or cure the defect in the application for a period of ten days from the date of the written notification. An applicant aggrieved by a decision of the registrar not to grant the license may appeal the decision to the district court of the applicant's county of residence or Burleigh County.
3. The application for a certificate of renewal must be made to the registrar on or before the first day of March of each year. At the time of filing the application for a certificate of renewal, the applicant shall pay to the registrar a renewal fee equal to twenty percent of the license fee established in section 43-07-07. If any contractor applies for a renewal under a class different from the license previously issued, the new class license may be issued upon the payment of the fee required for the issuance of the license of the class applied for. If any contractor fails to file an application for a certificate of renewal by the March first deadline, the contractor's license is not in good standing and the contractor must be deemed to be unlicensed within the meaning of sections 43-07-02 and 43-07-18. Within sixty days after March first, the contractor must be notified by mail that the contractor's license is not in good standing. The contractor then has until June first to renew by paying a penalty fee of seventy-five percent of the renewal fee, filing an application for a certificate of renewal, and paying the renewal fee. A contractor who applies for a certificate of renewal before or within ninety days of the filing deadline is not subject to the investigation authorized in section 43-07-09. After the June first deadline any licenses not renewed are revoked. Any application for a certificate of renewal must be fully completed within sixty days of the date the application is received by the registrar or the registrar shall return the application to the contractor who



then is subject to section 43-07-09. The registrar may destroy all renewals provided for in this section after they have been on file for six years.

**SECTION 4. AMENDMENT.** Subsection 3 of section 43-07-14 of the North Dakota Century Code is amended and reenacted as follows:

3. Any act or omission under this section may also constitute grounds for the attorney general to bring an action under chapter 51-15 against the licensee or any unlicensed person engaging in the business or acting in the capacity of a contractor in violation of section 43-07-02 and subjects the licensee or any such unlicensed person to all provisions, procedures, remedies, and penalties provided for in chapter 51-15.

Approved March 5, 2007

Filed March 6, 2007

**CHAPTER 360****HOUSE BILL NO. 1218**

(Representatives Klein, Ekstrom, Karls)  
(Senators Dever, Horne, Robinson)

**ELECTRICIAN QUALIFICATIONS AND STUDY**

AN ACT to amend and reenact section 43-09-11 of the North Dakota Century Code, relating to qualifications of electricians; and to provide for a legislative council study.

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

**SECTION 1. AMENDMENT.** Section 43-09-11 of the North Dakota Century Code is amended and reenacted as follows:

**43-09-11. Qualifications as to experience.** An applicant for an electrician's license must have the following experience and training:

1. ~~Master~~ For licensure as a master electrician, an applicant must have completed one year's experience as a licensed journeyman electrician.
2. ~~Journeyman~~ For licensure as a journeyman electrician, ~~four years'~~ an applicant must have:
  - a. Completed eight thousand hours experience in installing and repairing electrical wiring, apparatus, and equipment, which experience may not be obtained in less than three years.
  - b. Effective for an applicant who registered with the board as an apprentice after January 31, 2008, completed at least one of the following:
    - (1) Successfully completed apprenticeship training approved by the federal bureau of apprenticeship and training and completed eight thousand hours' experience in installing and repairing electrical wiring, apparatus, and equipment.
    - (2) Successfully completed an appropriate course of study, which may not be less than two years or the equivalent of two years, at a board-approved institution of higher education and completed eight thousand hours' experience in installing and repairing electrical wiring, apparatus, and equipment. The board may determine equivalent hours of education that may be applied as a credit against the eight thousand hours' experience requirement under this paragraph.
3. ~~Class~~ For licensure as a class B electrician, eighteen months' experience in farmstead or residential wiring.

**SECTION 2. LEGISLATIVE COUNCIL STUDY - LICENSURE OF ELECTRICIANS.** The legislative council shall consider studying, during the 2007-08 interim, the licensure, training, and classroom education requirements for electricians in this state; reciprocity agreements with other states and the effect of those agreements on standards in this state; and the effect of the licensure, training, classroom education requirements, and reciprocity agreements on the availability of qualified electricians in North Dakota. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Approved April 10, 2007  
Filed April 11, 2007

**CHAPTER 361****HOUSE BILL NO. 1118**

(Human Services Committee)  
(At the request of the Board of Nursing)

**NURSE LICENSURE AND REGISTRATION**

AN ACT to amend and reenact sections 43-12.1-08, 43-12.1-09, and 43-12.1-10 of the North Dakota Century Code, relating to the issuance of limited licenses and registrations by the board of nursing and the requirements of nurse applicants for license by endorsement; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 43-12.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.1-08. Duties of the board.**

1. The board shall regulate the practice of nursing. Regulation of the practice of nursing must ensure that a person may not practice or offer to practice nursing or use titles of advanced practice registered nurse, specialty practice registered nurse, registered nurse, licensed practical nurse, or unlicensed assistive person, or titles of a similar nature which denote the practice of nursing to the general public unless licensed or registered as provided in this chapter.
2. The board shall:
  - a. Enforce this chapter.
  - b. Adopt rules necessary to administer this chapter after collaborating and consulting with North Dakota nursing associations and other affected parties.
  - c. Appoint and employ a registered nurse to serve as executive director and approve any additional staff positions necessary to administer this chapter.
  - d. Establish fees and receive all moneys collected under this chapter and authorize all expenditures necessary to conduct the business of the board. Any balance of fees after payment of expenditures must be used to administer this chapter.
  - e. Collect and analyze data regarding nursing education, nursing practice, and nursing resources.
  - f. Issue and renew limited licenses or registrations to individuals requiring accommodation to practice nursing or assist in the practice of nursing.
  - g. Establish confidential programs for the rehabilitation of nurses with workplace impairments.

- h. Establish a nursing student loan program funded by license fees to encourage individuals to enter and advance in the nursing profession.
- i. Establish a registry of individuals licensed or registered by the board.
- j. Report annually to the governor and nursing profession regarding the regulation of nursing in the state.
- k. Conduct and support projects pertaining to nursing education and practice.
- l. Notify the board of pharmacy on an annual basis, or more frequent basis if necessary, of advanced practice registered nurses authorized to write prescriptions.
- m. Adopt rules to allow nurses licensed by another state to receive short-term clinical education in North Dakota health care facilities.

**SECTION 2. AMENDMENT.** Section 43-12.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.1-09. Initial licensure and registration.**

1. The board shall license and register nursing and unlicensed assistive person applicants. The board shall adopt rules establishing qualifications for initial nursing licensure and unlicensed assistive person registration and for issuing limited licenses and registrations pursuant to subsection 3.
2. Each applicant who successfully meets the requirements of this section is entitled to initial licensure or registration as follows:
  - a. An applicant for licensure by examination to practice as a registered nurse or licensed practical nurse shall:
    - (1) Submit a completed application and appropriate fee as established by the board.
    - (2) Submit an official transcript showing completion of an in-state nursing education program or a board-approved out-of-state nursing education program preparing for the level of licensure sought. The board shall adopt rules establishing standards for the approval of out-of-state nursing education programs. These standards for out-of-state programs must include consideration of whether the program is accredited by the national league for nursing accrediting commission, incorporated, or the commission on collegiate nursing education and whether the program meets the requirements of the state in which the program is provided.
    - (3) Pass an examination approved by the board.

- b. An applicant for licensure by endorsement to practice as a registered nurse or licensed practical nurse shall:
- (1) Submit a completed application and appropriate fee as established by the board.
  - (2) Submit an official transcript showing completion of a nursing education program preparing for the level of licensure sought.
  - (3) Submit proof of initial licensure by examination with the examination meeting North Dakota requirements for licensure examinations in effect at the time the applicant qualified for initial licensure.
  - (4) Submit evidence of current unencumbered licensure in another state or meet continued competency requirements as established by the board.
  - (5) Notwithstanding the foregoing requirements of this subdivision, if an applicant for licensure as a licensed practical nurse has been licensed in another state as a licensed practical nurse based upon completion of a registered nurse education program and has had at least twenty-four months of unencumbered practice as a licensed practical nurse in another state within the five-year period preceding the application, then the applicant is not required to meet any additional educational requirements for licensure as a licensed practical nurse.
- c. An applicant for licensure as an advanced practice registered nurse shall:
- (1) Submit a completed application and appropriate fee as established by the board.
  - (2) Submit evidence of appropriate education and current certification in an advanced nursing role by a national nursing organization meeting criteria as established by the board. An advanced practice registered nurse applicant must have a graduate degree with a nursing focus or must have completed the educational requirements in effect when the applicant was initially licensed.
  - (3) Possess or show evidence of application for a current unencumbered registered nurse license.
- d. An applicant for licensure as an advanced practice registered nurse who completed an advanced nursing education program and was licensed or certified in advanced practice by another state before January 1, 2001, or who completed an advanced nursing education program and was licensed or certified as a women's health care nurse practitioner by another state before January 1, 2007, may apply for and receive an advanced practice license if that applicant meets the requirements that were in place in this

state at the time the applicant qualified for initial advanced practice licensure in that state.

- e. An applicant for unlicensed assistive person registration shall:
  - (1) Submit a completed application and the appropriate fee as established by the board.
  - (2) Provide verification of appropriate training or evidence of certification or evaluation in the performance of basic nursing interventions.
- f. An applicant for licensure as a specialty practice registered nurse shall:
  - (1) Submit a completed application and appropriate fee as established by the board.
  - (2) Submit evidence of appropriate education and current certification in a specialty nursing role by a national nursing organization meeting criteria as established by the board. A specialty practice registered nurse applicant must have the educational preparation and national certification within a defined area of nursing practice.
  - (3) Possess or show evidence of application for a current unencumbered registered nurse license.

3. For good cause shown, the board may issue a limited license or registration to an applicant.

**SECTION 3. AMENDMENT.** Section 43-12.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.1-10. Renewal of license or registration - Reactivation.**

- 1. The board shall renew a current license to practice as an advanced practice registered nurse, specialty practice registered nurse, registered nurse, or licensed practical nurse if the licensee submits a renewal application, submits the appropriate fee established by the board, and meets all requirements for licensure. If a licensee does not renew a license before the license expires, the board shall reactivate that license if that licensee meets the reactivation requirements set by the board.
- 2. The board shall renew the registration of an unlicensed assistive person if the registrant submits a renewal application, the appropriate fee established by the board, and documentation of competency by the employer or evidence of certification or evaluation. A lapsed unlicensed assistive person registration may be reactivated upon submission of the application, payment of the appropriate fee established by the board, and documentation of competency or evidence of certification or evaluation.
- 3. For good cause shown, the board may issue a limited license or registration to a licensee or registrant. The board shall adopt rules

establishing qualifications for issuing limited licenses and registrations pursuant to this subsection.

**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 23, 2007  
Filed March 23, 2007



**CHAPTER 362****HOUSE BILL NO. 1123**

(Human Services Committee)

(At the request of the State Board of Optometry)

**OPTOMETRIST REGULATION AND LICENSING**

AN ACT to amend and reenact subsections 2 and 3 of section 43-13-02, sections 43-13-05, 43-13-06, and 43-13-11, subsection 3 of section 43-13-13.2, section 43-13-20, subsection 7 of section 43-13-22, and section 43-13-28 of the North Dakota Century Code, relating to regulation and licensing of optometrists.

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

**SECTION 1. AMENDMENT.** Subsections 2 and 3 of section 43-13-02 of the North Dakota Century Code are amended and reenacted as follows:

2. Student interns who are currently enrolled in an optometry school or college accredited by the accreditation council on optometric education of the American optometric association, or its successor agency, or who have graduated no more than three months prior, and are under the immediate and direct supervision of a licensed optometrist.
3. Physicians and surgeons ~~authorized to practice medicine in this state, except that the provisions of section 43-13-28 remain applicable~~ licensed under chapter 43-17.

**SECTION 2. AMENDMENT.** Section 43-13-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-13-05. Secretary of board - Duties - Record - Custodian of fees - Report.** The secretary of the board, or the secretary's designee, has the following duties:

1. Keep a full record of the proceedings of the board.
2. Be custodian of all fees coming into the possession of the board.
3. At such times as may be required by the board, furnish a complete statement of receipts and disbursements under oath, together with vouchers, receipts, and such other evidence of the receipts and disbursements as may be required by the board.

**SECTION 3. AMENDMENT.** Section 43-13-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-13-06. Secretary of board - Bond.** The secretary of the board, or the secretary's designee in the event the duties have been delegated to another, must be bonded for the faithful discharge of duties in such amount as may be prescribed by the board.

**SECTION 4. AMENDMENT.** Section 43-13-11 of the North Dakota Century Code is amended and reenacted as follows:

**43-13-11. Records of board.** The record of the proceedings of the board kept by the secretary, or the secretary's designee, at all reasonable times must be open to public inspection. ~~Such~~ The record also must contain, ~~under permanent binding,~~ a registry list of all persons licensed by the board, together with renewals and revocations of licenses. The record constitutes the official registry of all persons licensed to practice optometry in this state.

**SECTION 5. AMENDMENT.** Subsection 3 of section 43-13-13.2 of the North Dakota Century Code is amended and reenacted as follows:

3. The board shall ~~notify~~ provide the board of pharmacy ~~in writing, and on an annual basis or when other optometrists are certified, of the specific optometrists certified by the board upon request~~ a list of licensed optometrists certified in the use of pharmaceutical agents.

**SECTION 6. AMENDMENT.** Section 43-13-20 of the North Dakota Century Code is amended and reenacted as follows:

**43-13-20. Term of license - Renewal - Annual license fee - Continuing educational requirements.** A license to practice optometry in the state may be issued for one year only, but may be renewed by paying to the secretary of the board, during the month of ~~January~~ December of each year, the license fee for ~~that~~ the following 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~~ the education programs if an applicant furnishes the board with sufficient proof that the applicant has been unable to attend ~~such~~ the education programs during a year, which proof ~~shall~~ must 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~~ the educational programs. The license fee for each year must be determined annually by the North Dakota state board of optometry and be a reasonable sum fixed by the board. The board shall adopt reasonable rules ~~which~~ that must state the type of optometric educational programs which are approved. The board also shall ~~also~~ designate the number of classroom hours which must be attended, which ~~will~~ must be a reasonable amount for each three-year period. Any person who does not meet these requirements by ~~February~~ January first of the year in which the license fee becomes due and payable is in default and may be reinstated by the board upon the payment of an additional sum reasonably fixed by the board, 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 requires~~ This section does not require an applicant to become a member of the North Dakota optometric association or any other association of optometrists.

**SECTION 7. AMENDMENT.** Subsection 7 of section 43-13-22 of the North Dakota Century Code is amended and reenacted as follows:

7. Is engaged in the practice of optometry by being directly or indirectly employed by any person other than ~~one who holds a valid unrevoked license as an optometrist in this state and who has an actual legal residence within this state~~ a licensed optometrist, a physician licensed

under chapter 43-17, a hospital, or a clinic operated by licensed optometrists or by licensed physicians.

**SECTION 8. AMENDMENT.** Section 43-13-28 of the North Dakota Century Code is amended and reenacted as follows:

**43-13-28. Prohibitions.** It is unlawful for any ~~corporation, limited liability company, organization, association, group, or individual~~ person who is not the holder of a license to practice optometry, to engage in the practice of optometry, directly or indirectly, by employing or hiring upon a salary, commission, or ~~other basis or by associating upon a lease or any~~ other profit-sharing arrangement ~~with a licensed optometrist or licensed physician~~ except as permitted by the rules and regulations of the board. The provisions of this section do not apply to ~~cooperative or to nonprofit associations or nonprofit corporations~~ a physician licensed under chapter 43-17, a hospital, or a clinic operated by licensed optometrists or by licensed physicians.

Approved March 6, 2007

Filed March 7, 2007

**CHAPTER 363****HOUSE BILL NO. 1054**

(Human Services Committee)

(At the request of the State Board of Pharmacy)

**PHARMACY CLOSINGS AND PRACTICE**

AN ACT to create and enact sections 43-15-38.1 and 43-15-42.3 of the North Dakota Century Code, relating to pharmacy closings and reporting requirements; to amend and reenact sections 43-15-01, 43-15-05, 43-15-10, and 43-15-25.2 of the North Dakota Century Code, relating to the practice of pharmacy; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 43-15-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-15-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Administration" means the direct application of a drug to the body of a patient.
  - a. The term includes:
    - (1) The emergency maintenance of a drug delivery device used in home infusion therapy by a qualified home pharmacist when nursing service is not available;
    - (2) Immunization and vaccination by injection of an individual who is more than eighteen years of age, upon an order by a physician or nurse practitioner authorized to prescribe such a drug or by written protocol with a physician or nurse practitioner; and
    - (3) Provision of drugs by subcutaneous, intradermal, and intramuscular injection to an individual who is more than eighteen years of age upon the order of a physician or nurse practitioner authorized to prescribe such a drug.
  - b. The term does not include the regular ongoing delivery of a drug to the patient in a health care setting and other parenteral administration of a drug.
2. "Automated dispensing system" means a mechanical system that performs operations or activities, other than compounding or administration, relative to the storage, packaging, counting, labeling, and dispensing of medications and which collects, controls, and monitors all transaction information.
3. "Board" means the state board of pharmacy.

- ~~3-~~ 4. "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device:
- As the result of a practitioner's prescription drug order or initiative based on the practitioner, patient, and pharmacist relationship in the course of professional practice; or
  - For the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing.

Compounding also includes the preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns.

4. 5. "Confidential information" means individually identifiable health information maintained by the pharmacist in the patient's records or which is communicated to the patient as part of a patient counseling.
- ~~5-~~ 6. "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a drug or device from one person to another, whether or not for a consideration.
- ~~6-~~ 7. "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component part or accessory, which is required under federal or North Dakota law to be prescribed by a practitioner and dispensed by a pharmacist.
- ~~7-~~ 8. "Dispense" or "dispensing" means the preparation and delivery of a prescription drug, pursuant to a lawful order of a practitioner or a nurse licensed under chapter 43-12.1 who is authorized by the practitioner to orally transmit the order that has been reduced to writing in the patient's record, in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug.
- ~~8-~~ 9. "Distribute" means the delivery of a drug other than by dispensing or administering.
- ~~9-~~ 10. "Drug" or "drugs" means:
- Articles recognized as drugs in the official United States pharmacopeia, official national formulary, official homeopathic pharmacopeia, other drug compendium, or any supplement to any of them;
  - Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animal;
  - Articles other than food intended to affect the structure or any function of the body of man or other animals; and
  - Articles intended for use as a component of any articles specified in subdivision a, b, or c.
- ~~40-~~ 11. "Drug regimen review" includes the following activities:

- a. Evaluation of the prescription drug orders and patient records for:
    - (1) Known allergies;
    - (2) Rational therapy-contraindications;
    - (3) Reasonable dose and route of administration; and
    - (4) Reasonable directions for use.
  - b. Evaluation of the prescription drug orders and patient records for duplication of therapy.
  - c. Evaluation of the prescription drug orders and patient records for interactions:
    - (1) Drug-drug;
    - (2) Drug-food;
    - (3) Drug-disease; and
    - (4) Adverse drug reactions.
  - d. Evaluation of the prescription drug orders and patient records for proper utilization, including overutilization or underutilization, and optimum therapeutic outcomes.
- ~~44.~~ 12. "Emergency pharmacy practice" means in the event a pharmacist receives a request for a prescription refill and the pharmacist is unable to obtain refill authorization from the prescriber, the pharmacist may dispense a one-time emergency refill of up to a seventy-two-hour supply of the prescribed medication, provided that:
- a. The prescription is not for a controlled substance listed in schedule II;
  - b. The pharmaceutical is essential to the maintenance of life or to the continuation of therapy;
  - c. In the pharmacist's professional judgment, the interruption of therapy might reasonably produce undesirable health consequences or may cause physical or mental discomfort;
  - d. The pharmacist properly records the dispensing; and
  - e. The dispensing pharmacist notifies the prescriber of the emergency dispensing within a reasonable time after the one-time emergency refill dispensing.
- ~~42.~~ 13. "Labeling" means the process of preparing and affixing of a label to any drug container exclusive, however, of the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged legend drug or device. Any label shall include all information required by federal and North Dakota law or regulation.

- ~~43.~~ 14. "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a device or a drug, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substances or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a drug by an individual for the individual's own use or the preparation, compounding, packaging, or labeling of a drug:
- a. By a pharmacist or practitioner as an incident to dispensing or administering of a drug in the course of the person's professional practice; or
  - b. By a practitioner or by the practitioner's authorization under supervision for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale.
- ~~44.~~ 15. "Manufacturer" means a person engaged in the manufacture of drugs in facilities located within North Dakota.
- ~~45.~~ 16. "Medicine" means a drug or combination of drugs, used in treating disease in man or other animals.
- ~~46.~~ 17. "Nonprescription drugs" means medicines or drugs which may be sold without a prescription and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the statutes and regulations of this state and the federal government.
- ~~47.~~ 18. "Original package" means the original carton, case, can, box, vial, bottle, or other receptacle, put up by the manufacturer or wholesaler or distributor, with label attached, making one complete package of the drug article.
- ~~48.~~ 19. "Person" means an individual, corporation, limited liability company, partnership, association, or any other legal entity.
- ~~49.~~ 20. "Pharmaceutical care" is the provision of drug therapy and other pharmaceutical patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process as defined in the rules of the board.
- ~~20.~~ 21. "Pharmacist" means a person to whom the board has issued a license to practice the profession of pharmacy whose license has not expired or been suspended.
- ~~24.~~ 22. "Pharmacy" or "drugstore" means every store or shop where drugs, medicines, or chemicals are dispensed, displayed for sale, or sold, at retail for medicinal purposes, or where prescriptions are compounded, and which is duly registered by the board.
- ~~22.~~ 23. "Pharmacy technician" means a person registered by the board who is employed by a pharmacy to assist licensed pharmacists in the practice of pharmacy by performing specific tasks delegated by and under the

immediate personal supervision and control of a licensed pharmacist, as permitted by the board.

- ~~23.~~ 24. "Practice of pharmacy" means the interpretation, evaluation, and monitoring of prescription orders and patient drug therapy; the compounding, dispensing, labeling of drugs and devices except labeling by a manufacturer, packer, or distributor of nonprescription drugs and commercially packaged legend drugs and devices; the participation in drug selection, drug monitoring, drug administration, drug regimen review, the provision of these acts or services necessary as a primary health care provider of pharmaceutical care, and drug utilization evaluations; the proper and safe storage of drugs and devices and the maintenance of proper records for this storage; the responsibility for advising, consulting, and educating if necessary or if regulated, patients, public, and other health care providers on the rational, safe, and cost-effective use of drugs including therapeutic values, content, hazards, and appropriate use of drugs and devices; the participation in interpreting and applying pharmacokinetic data and other pertinent laboratory data to design safe and effective drug dosage regimens; if appropriate and if regulated, the participation in drug research either scientific or clinical as investigator or in collaboration with other investigators for the purposes of studying the effects of drugs on animals or human subjects, with other drugs or chemicals, and with drug delivery devices; emergency pharmacy practice; prescriptive practices as limited under this chapter; the performance of laboratory tests to provide pharmaceutical care services which are waived under the Federal Clinical Laboratory Improvement Act of 1988 [Pub. L. 100-578, section 2; 102 Stat. 2903; 42 U.S.C. 263a et seq.], as amended; and the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of pharmacy.
- ~~24.~~ 25. "Practitioner" means an individual licensed, registered, or otherwise authorized by the jurisdiction in which the individual is practicing to prescribe drugs in the course of professional practice.
- ~~25.~~ 26. "Prescription" means any order for drugs or medical supplies, where such order is written or signed or transmitted by word of mouth, telephone, telegram, or other means of communication by a duly licensed physician, optometrist, dentist, veterinarian, or other practitioner, licensed by law to prescribe and administer such drugs or medical supplies intended to be filled, compounded, or dispensed by a pharmacist or any order for drugs or medical supplies transmitted orally by a nurse licensed under chapter 43-12.1 as written and signed by such a duly licensed physician, optometrist, dentist, veterinarian, or other practitioner.
- ~~26.~~ 27. "Prescription drug or legend drug" means a drug which, under federal law is required, prior to being dispensed or delivered, to be labeled with one of the following:
- a. "Caution: Federal law prohibits dispensing without prescription";
  - b. "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian"; or



- c. Rx only;

or a drug which is required by any applicable federal or North Dakota law or rule to be dispensed on prescription only or is restricted to use by practitioners only.

- ~~27-~~ 28. "Radiopharmaceutical service" means, but is not limited to, the compounding, dispensing, labeling, and delivery of radiopharmaceuticals; the participation in radiopharmaceutical selection and radiopharmaceutical utilization reviews; the proper and safe storage and distribution of radiopharmaceuticals; the maintenance of radiopharmaceutical quality assurance; the responsibility for advising, where necessary or where regulated, of therapeutic values, hazards, and use of radiopharmaceuticals; and the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of radiopharmaceuticals.
- ~~28-~~ 29. "Wholesaler" means a person with facilities located in this state who buys for resale and distribution to persons other than consumers.

**SECTION 2. AMENDMENT.** Section 43-15-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-15-05. Compensation of board - Disposition of fees.** Each member of the board shall receive a per diem of ~~twenty~~ two hundred dollars for attendance at board meetings, and all actual and necessary expenses incurred in attending such meetings and in performing other official duties. The mileage and travel expense allowed may not exceed the amount provided for in section 54-06-09. All funds collected or received by the board must be deposited and disbursed in accordance with section 54-44-12.

<sup>189</sup> **SECTION 3. AMENDMENT.** Section 43-15-10 of the North Dakota Century Code is amended and reenacted as follows:

**43-15-10. Powers of board.** In addition to other powers provided by law, the board shall have the following powers and duties, which shall be exercised in conformity with chapter 28-32 in order to protect the public health, welfare, and safety:

1. To place on probation, reprimand, or fine any pharmacy, pharmacist, or ~~licensed pharmacist~~ pharmacy intern or pharmacy technician; or refuse to issue or renew, or suspend, revoke, restrict, or cancel, the license, permit, or ~~license~~ registration of any pharmacy, pharmacist, or ~~licensed pharmacist~~ pharmacy intern or pharmacy technician, if any of the following grounds apply and the pharmacy, pharmacist, or ~~licensed pharmacist~~ pharmacy intern or pharmacy technician:
  - a. Is addicted to any alcohol or drug habit.

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<sup>189</sup> Section 43-15-10 was also amended by section 10 of Senate Bill No. 2260, chapter 115.

- b. Uses any advertising statements of a character tending to deceive or mislead the public.
  - c. Is subject to drug or alcohol dependency or abuse.
  - d. Permits or engages in the unauthorized sale of narcotic drugs or controlled substances.
  - e. Permits or engages an unauthorized person to practice pharmacy.
  - f. Is mentally or physically incompetent to handle pharmaceutical duties.
  - g. Is guilty of fraud, deception, or misrepresentation in passing the pharmacist examination.
  - h. Is found by the board in violation of any of the provisions of the laws regulating drugs, pharmacies, and pharmacists or interns and technicians or the rules and regulations established by the board.
  - i. Is found to have engaged in unprofessional conduct as that term is defined by the rules of the board.
  - j. Is subject to incapacity of a nature that prevents a pharmacist from engaging in the practice of pharmacy with reasonable skill, competence, and safety to the public.
  - k. Is found guilty by a court of competent jurisdiction of one or more of the following:
    - (1) A felony, as defined by the statutes of North Dakota.
    - (2) Any act involving moral turpitude or gross immorality.
    - (3) Violations of the pharmacy or the drug laws of North Dakota or rules and regulations pertaining thereto, or of statutes, rules or regulations of any other state, or of the federal government.
  - l. Commits fraud or intentional misrepresentation in securing the issuance or renewal of a license or pharmacy permit.
  - m. Sells, dispenses, or compounds any drug while on duty and while under the influence of alcohol or while under the influence of a controlled substance without a practitioner's prescription.
  - n. Discloses confidential information to any person, except as authorized by law.
2. To prescribe rules and regulations not inconsistent with this chapter governing the cancellation or suspension of a license.
  3. To examine and license as pharmacist any applicant found entitled to such license.

4. To prescribe rules and regulations for the guidance of its members, officers, and employees, and to ensure the proper and orderly dispatch of its business.
5. To employ and pay such persons as it may deem necessary to inspect pharmacies in this state, investigate pharmacies for the information of the board, procure evidence in any proceeding pending before the board, or procure evidence in aid of any prosecution or action in any court commenced or about to be commenced by or against the board in relation to any matter in which the board has any duty to perform.
6. To employ and pay counsel to advise the board or to prosecute or defend any action or proceeding commenced by or against the board or pending before it.
7. To grant permits and renewals thereof for the establishment and operation of pharmacies.
8. Only for good cause to cancel, revoke, or suspend permits and renewals thereof for the establishment and operation of pharmacies.
9. To prescribe reasonable and nondiscriminatory rules and regulations in regard to granting, renewing, canceling, revoking, or suspending permits and renewals for establishing and operating pharmacies.
10. Action by the board canceling, revoking, suspending, or refusing to renew a permit to establish or operate a pharmacy shall not be enforced for thirty days after notice has been given an aggrieved party by the board, nor during the time that an appeal by such aggrieved party is pending and until such appeal is finally determined.
11. To prescribe reasonable rules and regulations relating to the physical design of space occupied by a pharmacy to ensure appropriate control of and safeguards over the contents of such pharmacy.
12. To regulate and control the practice of pharmacy in North Dakota.
13. To adopt, amend, and repeal rules for the regulation of pharmacies and pharmacists providing radiopharmaceutical services, including special training, education, and experience for pharmacists and physical design of space, safeguards, and equipment for pharmacies.
14. To adopt, amend, and repeal rules determined necessary by the board for the proper administration and enforcement of this chapter, chapter 19-02.1 as that chapter pertains to drugs, subject to approval of the director of the state department of health, and chapter 19-03.1.
15. 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 pertains to drugs, chapters 19-03.1, 19-03.2, and 19-04, or of the rules of the board. Board investigative files are confidential and may not be considered public records or open records for purposes of section 44-04-18, until a complaint is filed or a decision made by the board not to file a complaint.

16. 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 or its agents or the court. No person may 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.
17. 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.
18. The board shall establish a bill of rights for patients concerning the health care services a patient may expect in regard to pharmaceutical care.
19. To adopt, amend, and repeal rules as may be deemed necessary by the board to register pharmacy technicians pursuant to qualifications established by the board, to charge a pharmacy technician an annual registration fee not to exceed fifty dollars, to specify tasks associated

with and included in the practice of pharmacy which may be delegated by a licensed pharmacist to a registered pharmacy technician, to provide for suspension or revocation of a pharmacy technician's registration, and to regulate and control pharmacy technicians. The board may allocate up to fifty percent of the amount of the registration fee to an appropriate pharmacy technician association for its general operating expenses, including pharmacy technician education and development standards.

20. To require the self-reporting by an applicant or a licensee of any information the board determines may indicate possible deficiencies in practice, performance, fitness, or qualifications.

**SECTION 4. AMENDMENT.** Section 43-15-25.2 of the North Dakota Century Code is amended and reenacted as follows:

**43-15-25.2. Educational requirements - Rules.** The board shall adopt rules establishing the educational requirements and quality control procedures for pharmacists who conduct laboratory tests provided in subsection ~~23~~ 24 of section 43-15-01. These rules must include a requirement that pharmacists receive training for each specific test performed and a requirement that pharmacists demonstrate proficiency for each test performed following nationally recognized proficiency guidelines.

**SECTION 5.** Section 43-15-38.1 of the North Dakota Century Code is created and enacted as follows:

**43-15-38.1. Closing a pharmacy.** The permitholder and the pharmacist in charge are jointly responsible to follow the procedures outlined in the rules for closing a pharmacy.

**SECTION 6.** Section 43-15-42.3 of the North Dakota Century Code is created and enacted as follows:

**43-15-42.3. Reporting requirements - Penalty.** A pharmacist, pharmacy permitholder, pharmacy intern, pharmacy technician, health care institution in the state, state agency, or law enforcement agency in the state having actual knowledge that a pharmacist, pharmacy intern, or pharmacy technician may have committed any of the grounds for disciplinary action provided by law or rules adopted by the board shall promptly report that information in writing to the state board of pharmacy. A pharmacist, pharmacy technician, or institution from which the pharmacist or pharmacy technician voluntarily resigns, or voluntarily limits that individual's staff privileges, shall report the actions of the licensee or registrant to the state board of pharmacy if that action occurs while the licensee or registrant is under formal or informal investigation by the institution or a committee of the institution for any reason related to possible professional incompetence, unprofessional conduct, or mental or physical impairment. Upon receiving a report concerning a licensee or registrant, the board's investigative committee may investigate any evidence that appears to show a licensee or registrant is committing, or may have committed, any of the grounds for disciplinary action provided by law or rules adopted by the board. A person required to report under this section who makes a report in good faith is not subject to criminal prosecution or civil liability for making the report. For purposes of any civil proceeding, the good faith of a person who makes the report under this section is presumed. A report to the impaired pharmacist program, the pharm-assist committee, of the North Dakota pharmacists association is considered reporting under this section. For purposes of this section, a person has actual knowledge if

that person acquired the information by personal observation or under circumstances that cause that person to believe there exists a substantial likelihood that the information is correct. An agency or health care institution that violates this section is guilty of a class B misdemeanor. A pharmacist, pharmacy permit holder, pharmacy intern, or pharmacy technician who violates this section is guilty of a class B misdemeanor and is subject to administrative action by the state board of pharmacy as specified by law or by rule.

Approved March 7, 2007  
Filed March 8, 2007

**CHAPTER 364****HOUSE BILL NO. 1299**

(Representative Porter)

(Senator Krebsbach)

**PHARMACY PERMITS AND STUDY**

AN ACT to amend and reenact section 43-15-35 of the North Dakota Century Code, relating to postgraduate medical residency training program pharmacies; and to provide for a legislative council study.

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

<sup>190</sup> **SECTION 1. AMENDMENT.** Section 43-15-35 of the North Dakota Century Code is amended and reenacted as follows:

**43-15-35. Requirements for permit to operate pharmacy - Exceptions.**

1. The board shall issue a permit to operate a pharmacy, or a renewal permit, upon satisfactory proof of all of the following:
  1. a. The pharmacy will be conducted in full compliance with existing laws and with the rules and regulations established by the board.
  2. b. The equipment and facilities of the pharmacy are such that prescriptions can be filled accurately and properly, and United States pharmacopeia and national formulary preparations properly compounded and so that it may be operated and maintained in a manner that will not endanger public health and safety.
  3. c. The pharmacy is equipped with proper pharmaceutical and sanitary appliances and kept in a clean, sanitary, and orderly manner.
  4. d. The management of the pharmacy is under the personal charge of a pharmacist duly licensed under the laws of this state.
  5. e. The applicant for such permit is qualified to conduct the pharmacy, and is a licensed pharmacist in good standing or is a partnership, each active member of which is a licensed pharmacist in good standing; ~~or~~ a corporation or an association, the majority stock in which is owned by licensed pharmacists in good standing; ~~or~~ or a limited liability company, the majority membership interests in which is owned by licensed pharmacists in good standing, actively and regularly employed in and responsible for the management, supervision, and operation of such pharmacy.

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<sup>190</sup> Section 43-15-35 was also amended by section 1 of House Bill No. 1350, chapter 365.

6.
  - f. Suitable reference sources either in book or electronic data form, are available in the pharmacy or on-line, which might include the United States pharmacopeia and national formulary, the United States pharmacopeia dispensing information, facts and comparisons, micro medex, the ASHP American society of health-system pharmacists formulary, or other suitable references pertinent to the practice carried on in the licensed pharmacy.
2. The provisions of ~~subsection 5 shall~~ subdivision e of subsection 1 do not apply to the:
  - a. The holder of a permit on July 1, 1963, if otherwise qualified to conduct the pharmacy, provided that any such permitholder ~~who~~ that discontinues operations under such permit or fails to renew such permit upon expiration ~~shall is not thereafter be~~ is not thereafter be exempt from the provisions of ~~subsection 5 subdivision e of subsection 1~~ subdivision e of subsection 1 as to the discontinued or lapsed permit. ~~The provisions of subsection 5 shall not apply to~~
  - b. A hospital ~~pharmacies~~ pharmacy furnishing service only to patients in that hospital.
  - c. The applicant for a permit to operate a pharmacy which is a hospital, if the pharmacy for which the hospital seeks a permit to operate is a retail pharmacy that is the sole provider of pharmacy services in the community and is a retail pharmacy that was in existence before the hospital took over operations. A hospital operating a pharmacy under this subdivision may operate the pharmacy at any location in the community.

## **SECTION 2. LEGISLATIVE COUNCIL STUDY - REGULATION AND LICENSING OF PHARMACISTS.**

1. The legislative council shall consider studying, during the 2007-08 interim, the regulation and licensing of pharmacists in this state. The study must include an examination of:
  - a. The state board of pharmacy, the board's size, the manner of board membership appointment, and whether the board is representative of commercial and noncommercial pharmacists;
  - b. The state's demographics and the impact changing demographics in rural areas will have on the ability of small, locally owned pharmacies to remain economically viable and on the ability of rural residents to access low-cost pharmaceuticals and pharmacy and pharmacists' services;
  - c. The pharmacy ownership restrictions, the relevance of those restrictions in terms of marketplace competition, and the impact of those restrictions on the price and availability of pharmaceuticals and on pharmacy and pharmacists' services; and
  - d. The statutory interplay between the state board of pharmacy and the North Dakota pharmaceutical association and whether the regulatory function of the board conflicts with the advocacy function of the association.



2. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Approved March 23, 2007

Filed March 23, 2007

**CHAPTER 365****HOUSE BILL NO. 1350**

(Representatives Svedjan, Dietrich, Metcalf)  
(Senators Erbele, Holmberg, Mathern)

**PHARMACY PERMITS**

AN ACT to amend and reenact section 43-15-35 of the North Dakota Century Code, relating to postgraduate medical residency training program pharmacies.

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

<sup>191</sup> **SECTION 1. AMENDMENT.** Section 43-15-35 of the North Dakota Century Code is amended and reenacted as follows:

**43-15-35. Requirements for permit to operate pharmacy - Exceptions.**

1. The board shall issue a permit to operate a pharmacy, or a renewal permit, upon satisfactory proof of all of the following:
  - ~~1.~~ a. The pharmacy will be conducted in full compliance with existing laws and with the rules and regulations established by the board.
  - ~~2.~~ b. The equipment and facilities of the pharmacy are such that prescriptions can be filled accurately and properly, and United States pharmacopeia and national formulary preparations properly compounded and so that it may be operated and maintained in a manner that will not endanger public health and safety.
  - ~~3.~~ c. The pharmacy is equipped with proper pharmaceutical and sanitary appliances and kept in a clean, sanitary, and orderly manner.
  - ~~4.~~ d. The management of the pharmacy is under the personal charge of a pharmacist duly licensed under the laws of this state.
  - ~~5.~~ e. The applicant for such permit is qualified to conduct the pharmacy, and is a licensed pharmacist in good standing or is a partnership, each active member of which is a licensed pharmacist in good standing; ~~or~~; a corporation or an association, the majority stock in which is owned by licensed pharmacists in good standing; ~~or~~; or a limited liability company, the majority membership interests in which is owned by licensed pharmacists in good standing, actively and regularly employed in and responsible for the management, supervision, and operation of such pharmacy.

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<sup>191</sup> Section 43-15-35 was also amended by section 1 of House Bill No. 1299, chapter 364.

6. f. Suitable reference sources either in book or electronic data form, available in the pharmacy or on-line, which might include the United States pharmacopeia and national formulary, the United States pharmacopeia dispensing information, facts and comparisons, micro medex, the ~~ASHP~~ American society of health-system pharmacists formulary, or other suitable references pertinent to the practice carried on in the licensed pharmacy.
2. The provisions of ~~subsection 5 shall~~ subdivision e of subsection 1 do not apply to the:
- a. The holder of a permit on July 1, 1963, if otherwise qualified to conduct the pharmacy, provided that any such permit holder ~~who~~ that discontinues operations under such permit or fails to renew such permit upon expiration ~~shall~~ is not thereafter be exempt from the provisions of ~~subsection 5 subdivision e of subsection 1~~ as to the discontinued or lapsed permit. ~~The provisions of subsection 5 shall not apply to~~
- b. A hospital ~~pharmacies~~ pharmacy furnishing service only to patients in that hospital.
- c. The applicant for a permit to operate a pharmacy which is the owner of a postgraduate medical residency training program if the pharmacy is collocated with and is run in direct conjunction with the postgraduate medical residency training program. For purposes of this subdivision, the postgraduate medical residency training program must be accredited by the accreditation council on graduate medical education or other national accrediting organization.

Approved March 23, 2007

Filed March 23, 2007

**CHAPTER 366****HOUSE BILL NO. 1256**

(Representatives Weisz, Pollert, Thoreson)  
(Senators Christmann, J. Lee, Robinson)

**LEGEND PRESCRIPTION DRUG AND DEVICE  
PROGRAM**

AN ACT to create and enact chapter 43-15.2 of the North Dakota Century Code, relating to the creation of a legend prescription drug and device donation and repository program; and to provide an appropriation.

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

**SECTION 1.** Chapter 43-15.2 of the North Dakota Century Code is created and enacted as follows:

**43-15.2-01. Definitions.** In addition to the definitions under section 43-15-01, in this chapter unless the context otherwise requires:

1. "Donor" means a person that donates to the program legend drugs, devices, or supplies needed to administer such drugs.
2. "Participant" means a practitioner or pharmacy that has elected to participate in the program and accepts legend drugs, devices, and supplies from donors for the program.
3. "Program" means the legend drug donation and repository program established under this chapter.
4. "Supplies" means any supplies used in the administration of a legend drug.

**43-15.2-02. Administration.**

1. The state board of pharmacy shall establish and contract with a third party to administer a legend drug donation and repository program.
2. The board may develop and maintain a participant registry for the program. A participant registry created under this subsection must include the name, address, and telephone number of the participants. A participant registry created under this subsection must be available through the board or on the board's web site.
3. The board may cooperate with nongovernmental organizations to maintain a web-based list of legend drugs, devices, or supplies that have been donated and are available through the program and the participants from which the donated items may be available.

**43-15.2-03. Conditions for participation.**

1. A donor may donate legend drugs, devices, or supplies to the program through a practitioner or pharmacy that meets the criteria established for such participation. Legend drugs, devices, or supplies may not be donated directly to a specific patient and donated items may not be resold.
2. The items donated to the program may be prescribed for use by an individual by a practitioner who is authorized by law to prescribe and only a participant may dispense donated items.

**43-15.2-04. Conditions for acceptance of a donation.**

1. A drug donated, prescribed, or dispensed under the program must be in the original, unopened, sealed, and tamper-evident unit dose packaging, except a drug packaged in single-unit doses may be accepted and dispensed if the outside packaging has been opened and the single-unit-dose package is unopened.
2. A drug may not be accepted or dispensed under the program if the drug has reached its expiration date or if the drug is adulterated or misbranded as determined under subsection 3.
3. Before being dispensed to an eligible individual, the legend drugs, devices, and supplies donated under the program must be inspected by a pharmacist to determine that the legend drugs, devices, and supplies are not adulterated or misbranded.

**43-15.2-05. Storage, distribution, and dispensing.**

1. A participant that accepts donated legend drugs, devices, or supplies under the program shall comply with all applicable provisions of state and federal law relating to the storage, distribution, and dispensing of the donated legend drugs, devices, or supplies.
2. A participant may charge an individual a handling fee that does not exceed two hundred fifty percent of the medicaid prescription dispensing fee for dispensing donated legend drugs, devices, or supplies under the program.
3. A dispenser of donated legend drugs, devices, or supplies may not submit a claim or otherwise seek reimbursement from any public or private third-party payer for the cost of donated legend drugs, devices, or supplies dispensed to any eligible individual under the program. A public or private third-party payer is not required to provide reimbursement to a dispenser for the cost of donated legend drugs, devices, or supplies dispensed to any eligible individual under the program.

**43-15.2-06. Liability.**

1. A donor of legend drugs, devices, or supplies, or any participant in the program, that exercises reasonable care in donating, accepting, distributing, prescribing, and dispensing legend drugs, devices, or

supplies under the program and the rules adopted to implement this chapter is immune from civil or criminal liability and from professional disciplinary action of any kind for any injury, death, or loss to personal property relating to such activities.

2. In the absence of intentional misconduct, a pharmaceutical manufacturer is immune from civil or criminal liability for any claim, injury, death, or loss to person or property arising from transfer, donation, dispensing, or acceptance of any legend drugs, devices, or supplies under this chapter, including liability for failure to transfer or communicate product or consumer information regarding the transferred legend drugs, devices, or supplies as well as the expiration date of the legend drugs, devices, or supplies under the program.

**43-15.2-07. Recordkeeping.**

1. A participant shall retain separate records detailing the receipt, distribution, and dispensing of legend drugs, devices, and supplies under this program.
2. The records of receipt must include:
  - a. The name and address of the donor;
  - b. The drug name and strength;
  - c. The manufacturer of the legend drugs, devices, or supplies;
  - d. The manufacturer lot number;
  - e. The drug expiration date;
  - f. The date received; and
  - g. The quantity received.
3. Records of distribution and dispensing must include:
  - a. The name and address of the participant;
  - b. The drug or device name;
  - c. The drug strength;
  - d. The quantity distributed;
  - e. The identity of the manufacturer of the legend drugs, devices, or supplies;
  - f. The manufacturer lot number;
  - g. The expiration date;
  - h. The date of distribution or dispensing; and

- i. The name and address of the individual to whom the donated item was distributed.
4. Records of dispensing must include:
  - a. The requirements for a prescription label; and
  - b. The manufacturer's lot number.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$22,000, or so much of the sum as may be necessary, to the state department of health for the purpose of providing a grant of \$22,000 to the state board of pharmacy for establishing and administering a legend prescription drug and device donation and repository program, for the biennium beginning July 1, 2007, and ending June 30, 2009. The state department of health may not impose a fee for providing the grant nor impose any condition on the issuance of the grant other than that the state board of pharmacy is required to use the funds to establish and administer a legend prescription drug and device donation and repository program in accordance with section 1 of this Act.

Approved April 17, 2007

Filed April 17, 2007

**CHAPTER 367****HOUSE BILL NO. 1455**

(Representatives Thoreson, Koppelman, Price)  
(Senators Dever, J. Lee, Warner)

**WHOLESALE DRUG PEDIGREES**

AN ACT to create and enact chapter 43-15.3 of the North Dakota Century Code, relating to the pedigree for wholesale drugs; to amend and reenact section 12-60-24 of the North Dakota Century Code, relating to criminal history record checks; and to provide a penalty.

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

<sup>192</sup> **SECTION 1. AMENDMENT.** Section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

**12-60-24. Criminal history record checks.**

1. a. ~~The agencies and entities named in subsection 2 shall require each~~ Each applicant, employee, or petitioner for adoption ~~to who is subject to a criminal history record check under subsection 2 shall~~ consent to a statewide and nationwide criminal history record check for the purpose of determining suitability or fitness for a permit, license, employment, or adoption.
- b. Each applicant, employee, or petitioner for adoption subject to a criminal history check shall provide to the requesting agency or entity written consent to conduct the check, two sets of fingerprints from a law enforcement agency or other local agency authorized to take fingerprints, any other identifying information requested, and a statement indicating whether the applicant or employee has ever been convicted of a crime.
- c. The agency or entity shall submit these fingerprints to the bureau of criminal investigation for nationwide criminal history record information that includes resubmission of the fingerprints by the bureau of criminal investigation to the federal bureau of investigation. Except if otherwise provided by law, federal bureau of investigation criminal history record information obtained by an agency or entity is confidential. For a request for nationwide criminal history record information made under this section, the bureau of criminal investigation is the sole source to receive the fingerprint submissions and responses from the federal bureau of investigation. A person who takes fingerprints under this section

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<sup>192</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1313, chapter 374, section 2 of House Bill No. 1490, chapter 70, section 1 of Senate Bill No. 2037, chapter 491, section 3 of Senate Bill No. 2260, chapter 115, and section 4 of Senate Bill No. 2260, chapter 115.



may charge a reasonable fee to offset the cost of fingerprinting. Unless otherwise provided by law, the bureau of criminal investigation may charge appropriate fees for criminal history information.

2. The bureau of criminal investigation shall provide to each agency or entity listed in this subsection who has requested a statewide and nationwide criminal history record check, the response of the federal bureau of investigation and any statewide criminal history record information that may lawfully be made available under this chapter:
  - a. The governing body of a city or a county, by ordinance or resolution, for each applicant for a specified occupation with the city or county.
  - b. The agriculture commissioner for each applicant for a license to grow industrial hemp under section 4-41-02.
  - c. The education standards and practices board for initial and reciprocal teacher licenses under sections 15.1-13-14 and 15.1-13-20 and school guidance and counseling services under section 15.1-13-23.
  - d. The medical examiners board for licenses or disciplinary investigations under section 43-17-07.1, except that criminal history record checks need not be made unless required by the board.
  - e. The private investigative and security board for licenses or registrations under section 43-30-06.
  - f. The department of human services ~~department~~ for foster care licenses under section 50-11-06.8, appointments of legal guardians under section 50-11.3-01, and petitions for adoptions under section 50-12-03.2, except that the criminal history record investigation must be conducted in accordance with those sections.
  - g. The department of human services ~~department~~ for carecheck registrations under section 50-11.1-06.2.
  - h. The chief information officer of the information technology department for certain employees under section 54-59-20.
  - i. A public peace officer training school that has been approved by the peace officer standards and training board for enrollees in the school. The school may only disclose the criminal history record information as authorized by law. The school shall pay the costs for securing the fingerprints, any criminal history record information made available under this chapter, and for the nationwide criminal history background check. This subdivision does not apply to the highway patrol law enforcement training center and enrollees who have a limited license under section 12-63-09.
  - j. The North Dakota public employees retirement board for individuals first employed by the public employees retirement

board after July 31, 2005, who have unescorted physical access to the office or any security-sensitive area of the office as designated by the executive director.

- k. The executive director of the retirement and investment office for individuals first employed by the retirement and investment office after July 31, 2005, who have unescorted physical access to the office or any security-sensitive area of the office as designated by the executive director.
- l. The Bank of North Dakota for each applicant for a specified occupation with the Bank as designated by the president.
- m. Job service North Dakota for each applicant for a specified occupation with job service as designated by the executive director.
- n. The state department of health for employees assigned duties related to bioterrorism and homeland security issues as designated by the state health officer; a nurse aide seeking to have a finding of neglect removed from the nurse aide registry; or an individual being investigated by the state department of health who holds a license, certificate, or registration in a health-related field.
- o. The state board of pharmacy for a wholesale drug distributor seeking licensure under chapter 43-15.3.

**SECTION 2.** Chapter 43-15.3 of the North Dakota Century Code is created and enacted as follows:

**43-15.3-01. Definitions.** As used in this chapter, unless the context otherwise requires:

- 1. "Authentication" means to affirmatively verify before any wholesale distribution of a prescription drug occurs that each transaction listed on the pedigree has occurred.
- 2. "Authorized distributor of record" means a wholesale distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drug. An ongoing relationship is deemed to exist between the wholesale distributor and a manufacturer when the wholesale distributor, including any affiliated group of the wholesale distributor as defined in section 1504 of the Internal Revenue Code [26 U.S.C. 1504], complies with the following:
  - a. The wholesale distributor has a written agreement currently in effect with the manufacturer evidencing the ongoing relationship; and
  - b. The wholesale distributor is listed on the manufacturer's current list of authorized distributors of record, which is updated by the manufacturer on no less than a monthly basis.
- 3. "Board" means the state board of pharmacy.

4. "Chain pharmacy warehouse" means a physical location for prescription drugs which acts as a central warehouse and performs intracompany sales or transfers of the drugs to a group of chain pharmacies that have the same common ownership and control.
5. "Colicensed product" means a prescription drug in which two or more parties have the right to engage in the manufacturing or marketing or in the manufacturing and marketing of the drug.
6. "Drop shipment" means the sale of a prescription drug to a wholesale distributor by the manufacturer of the prescription drug, or that manufacturer's colicensed product partner, that manufacturer's third-party logistics provider, or that manufacturer's exclusive distributor, under the terms of which the wholesale distributor or chain pharmacy warehouse takes title but not physical possession of the prescription drug and the wholesale distributor invoices the pharmacy or chain pharmacy warehouse, or other person authorized by law to dispense or administer the drug to a patient, and the pharmacy or chain pharmacy warehouse or other authorized person receives delivery of the prescription drug directly from the manufacturer, or that manufacturer's third-party logistics provider, or that manufacturer's exclusive distributor.
7. "Facility" means a facility of a wholesale distributor where prescription drugs are stored, handled, repackaged, or offered for sale.
8. "Manufacturer" means a person licensed or approved by the federal food and drug administration to engage in the manufacture of drugs or devices.
9. "Manufacturer's exclusive distributor" means any person that contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer and which takes title to that manufacturer's prescription drug, but which does not have general responsibility to direct the sale or disposition of the manufacturer's prescription drug. The manufacturer's exclusive distributor must be licensed as a wholesale distributor under this chapter, and to be considered part of the normal distribution channel also must be an authorized distributor of record.
10. "Normal distribution channel" means a chain of custody for a prescription drug which goes, directly or by drop shipment, from a manufacturer of the prescription drug, from that manufacturer to that manufacturer's colicensed partner, from that manufacturer to that manufacturer's third-party logistics provider, or from that manufacturer to that manufacturer's exclusive distributor to:
  - a. A pharmacy, to a patient or other designated person authorized by law to dispense or administer the drug to a patient;
  - b. A wholesale distributor, to a pharmacy, to a patient or other designated person authorized by law to dispense or administer the drug to a patient;
  - c. A wholesale distributor, to a chain pharmacy warehouse, to that chain pharmacy warehouse's intracompany pharmacy, to a patient

or other designated person authorized by law to dispense or administer the drug to a patient; or

- d. A chain pharmacy warehouse, to the chain pharmacy warehouse's intracompany pharmacy, to a patient or other designated person authorized by law to dispense or administer the drug to a patient.
11. "Pedigree" means a document or an electronic file containing information that records each distribution of any given prescription drug.
  12. "Prescription drug" means any drug, including any biological product, except for blood and blood components intended for transfusion or biological products that are also medical devices, required by federal law, including federal regulation, to be dispensed only by a prescription, including finished dosage forms and bulk drug substances subject to section 503(b) of the federal Food, Drug and Cosmetic Act [21 U.S.C. 3539(b)].
  13. "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug, excluding actions completed by the pharmacists responsible for dispensing product to the patient.
  14. "Repackager" means a person who repackages.
  15. "Third-party logistics provider" means anyone who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer, but does not take title to the prescription drug or have general responsibility to direct the prescription drug's sale or disposition. The third-party logistics provider must be licensed as a wholesale distributor under this chapter and to be considered part of the normal distribution channel must also be an authorized distributor of record.
  16. "Wholesale distribution" means distribution of prescription drugs to persons other than a consumer or patient. The term does not include:
    - a. Intracompany sales of prescription drugs, meaning any transaction or transfer between any division, subsidiary, parent or affiliated or related company under common ownership and control of a corporate entity, or any transaction or transfer between colicensees of a colicensed product.
    - b. The sale, purchase, distribution, trade, or transfer of a prescription drug or offer to sell, purchase, distribute, trade, or transfer a prescription drug for emergency medical reasons.
    - c. The distribution of prescription drug samples by manufacturers' representatives.
    - d. Drug returns, when conducted by a hospital, health care entity, or charitable institution in accordance with title 21, Code of Federal Regulations, section 203.23.
    - e. The sale of minimal quantities of prescription drugs by retail pharmacies to licensed practitioners for office use.

- f. The sale, purchase, or trade of a drug; an offer to sell, purchase, or trade a drug; or the dispensing of a drug pursuant to a prescription.
  - g. The sale, transfer, merger, or consolidation of all or part of the business of a pharmacy from or with another pharmacy, whether accomplished as a purchase and sale of stock or business assets.
  - h. The sale, purchase, distribution, trade, or transfer of a prescription drug from one authorized distributor of record to one additional authorized distributor of record when the manufacturer has stated in writing to the receiving authorized distributor of record that the manufacturer is unable to supply such prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had until that time been exclusively in the normal distribution channel.
  - i. The delivery of, or offer to deliver, a prescription drug by a common carrier solely in the common carrier's usual course of business of transporting prescription drugs, and the common carrier does not store, warehouse, or take legal ownership of the prescription drug.
  - j. The sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired, damaged, returned, or recalled prescription drugs to the original manufacturer or to a third-party returns processor.
17. "Wholesale distributor" means anyone engaged in the wholesale distribution of prescription drugs, including, manufacturers; repackagers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses; manufacturer's exclusive distributors; authorized distributors of record; drug wholesalers or distributors; independent wholesale drug traders; specialty wholesale distributors; third-party logistics providers; retail pharmacies that conduct wholesale distribution; and chain pharmacy warehouses that conduct wholesale distribution. To be considered part of the normal distribution channel such wholesale distributor must also be an authorized distributor of record.

**43-15.3-02. Rulemaking authority.** The board shall adopt rules that conform with wholesale drug distributor licensing guidelines adopted by the federal food and drug administration, including rules necessary to carry out the purposes of this chapter, that incorporate and set detailed standards for meeting each of the license prerequisites set forth in this chapter, and that establish reasonable fees to carry out this chapter.

**43-15.3-03. Wholesale drug distributor licensing requirement - Minimum requirements for licensure.**

1. A wholesale distributor that engages in the wholesale distribution of prescription drugs must be licensed by the board under this chapter and must be properly licensed in any other state in which the wholesale distributor engages in the distribution of prescription drugs before engaging in wholesale distributions of wholesale prescription drugs in this state. However, information and qualification requirements for licensure beyond that required by federal law or regulation do not apply to manufacturers distributing their own United States food and drug

administration-approved drugs, unless particular requirements are deemed necessary and appropriate following rulemaking.

2. The board shall require the following minimum information from each wholesale distributor applying to get a license under subsection 1:
- a. The name, full business address, and telephone number of the licensee.
  - b. All trade or business names used by the licensee.
  - c. Addresses, telephone numbers, and the names of contact persons for all facilities used by the licensee for the storage, handling, and distribution of prescription drugs.
  - d. The type of ownership or operation.
  - e. The name of every owner and operator of the licensee, including:
    - (1) If an individual, the name of the individual;
    - (2) If a partnership, the name of each partner, and the name of the partnership;
    - (3) If a corporation, the name and title of each corporate officer and director, the corporate names, and the name of the state of incorporation; and
    - (4) If a sole proprietorship, the full name of the sole proprietor and the name of the business entity.
  - f. A list of all licenses and permits issued to the applicant by any other state that authorizes the applicant to purchase or possess prescription drugs.
  - g. The name of the applicant's designated representative for the facility, together with the personal information statement and fingerprints, required pursuant to subdivision h for the individual.
  - h. Each individual required by subdivision g to provide a personal information statement and fingerprints shall provide the following information to the state:
    - (1) The individual's places of residence for the past seven years;
    - (2) The individual's date and place of birth;
    - (3) The individual's occupations, positions of employment, and offices held during the past seven years;
    - (4) The principal business and address of any business, corporation, or other organization in which each office of the individual was held or in which each occupation or position of employment was carried on;

- (5) Whether the individual has been, during the past seven years, the subject of any proceeding for the revocation of any license or any criminal violation and, if so, the nature of the proceeding and the disposition of the proceeding;
  - (6) Whether, during the past seven years, the individual has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating any federal or state law regulating the possession, control, or distribution of prescription drugs or criminal violations, together with details concerning any of those events;
  - (7) A description of any involvement by the individual with any business, including any investments, other than the ownership of stock in a publicly traded company or mutual fund, during the past seven years, which manufactured, administered, prescribed, distributed, or stored pharmaceutical products and any lawsuits in which the businesses were names as a party;
  - (8) A description of any misdemeanor or felony criminal offense of which the individual, as an adult, was found guilty, regardless of whether adjudication of guilt was withheld or whether the individual pled guilty or nolo contendere. If the individual indicates that a criminal conviction is under appeal and submits a copy of the notice of appeal of that criminal offense, the applicant must, within fifteen days after the disposition of the appeal, submit to the state a copy of the final written order of disposition; and
  - (9) A photograph of the individual taken in the previous one hundred eighty days.
3. The information required under subsection 2 must be provided under oath.
  4. The board may not issue a wholesale distributor license to an applicant, unless the board:
    - a. Inspects or appoints a third party recognized by the board for the purpose of inspecting the wholesale distribution operations of the facility before initial licensure and continues to inspect periodically thereafter in accordance with a schedule to be determined by the board, but not less than every three years. Manufacturing facilities are exempt from inspection by the board if the manufacturing facilities are currently registered with the federal food and drug administration in accordance with section 510 of the federal Food, Drug, and Cosmetic Act [21 U.S.C. 301]; and
    - b. Determines that the designated representative meets the following qualifications:
      - (1) Is at least twenty-one years of age;
      - (2) Has been employed full time for at least three years in a pharmacy or with a wholesale distributor in a capacity

related to the dispensing and distribution of, and recordkeeping relating to, prescription drugs;

- (3) Is employed by the applicant full time in a managerial level position;
  - (4) Is actively involved in and aware of the actual daily operation of the wholesale distributor;
  - (5) Is physically present at the facility of the applicant during regular business hours, except when the absence of the designated representative is authorized, including sick leave and vacation leave;
  - (6) Is serving in the capacity of a designated representative for only one applicant at a time, except where more than one licensed wholesale distributor is colocated in the same facility and the wholesale distributors are members of an affiliated group, as defined in section 15-04 of the Internal Revenue Code [26 U.S.C. 1504];
  - (7) Does not have any convictions under any federal, state, or local laws relating to wholesale or retail prescription drug distribution or distribution of controlled substances; and
  - (8) Does not have any felony conviction under federal, state, or local laws.
5. The board shall submit the fingerprints provided by an individual with a license application for a statewide and nationwide criminal history check. The nationwide criminal history check must be conducted in the manner provided in section 12-60-24. All costs associated with the background check are the responsibility of the applicant.
  6. The board shall require every wholesale distributor applying for a license to submit a bond of at least one hundred thousand dollars, or other equivalent means of security acceptable to the state, including an irrevocable letter of credit or a deposit in a trust account or financial institution, payable to a fund established by the state under subsection 7. A chain pharmacy warehouse that is engaged only in intracompany transfers is not subject to the bond requirement. The purpose of the bond is to secure payment of any fines or penalties imposed by the state and any fees and costs incurred by the state regarding that license which are authorized under state law and which the licensee fails to pay thirty days after the fines, penalties, or costs become final. The state may make a claim against the bond or security until one year after the licensee's license ceases to be valid. A single bond may cover all facilities operated by the applicant in the state. Any chain pharmacy warehouse that is engaged only in intra-company transfers is exempt from the bond requirement.
  7. The board shall establish a fund in which to deposit the wholesale distributor bonds. Money in the fund is appropriated to the board on a continuing basis.



8. If a wholesale distributor distributes prescription drugs from more than one facility, the wholesale distributor shall obtain a license for each facility.
9. In accordance with each licensure renewal, the board shall send to each wholesale distributor licensed under this section a form setting forth the information that the wholesale distributor provided pursuant to subsection 2. Within thirty days of receiving the form, the wholesale distributor must identify and state under oath to the state licensing authority all changes or corrections to the information that was provided under subsection 2. Changes in, or corrections to, any information in subsection 2 must be submitted to the board as required by that authority. The board may suspend, revoke, or refuse to renew the license of a wholesale distributor if the board determines that the wholesale distributor no longer qualifies for the license issued under this section.
10. The designated representative identified pursuant to subdivision g of subsection 2 must receive and complete continuing training in applicable federal and state laws governing wholesale distribution of prescription drugs.
11. Information provided under subdivision h of subsection 2 may not be disclosed to any person other than a government agency that needs the information for licensing or monitoring purposes.

#### **43-15.3-04. Requirements to distribute prescription drugs.**

1. A person may not engage in wholesale distributions of prescription drugs without, after December 31, 2007, obtaining and maintaining accreditation or certification from the national association of boards of pharmacy's verified accredited wholesale distributor or an accreditation body approved by the board under subsection 4, obtaining and maintaining a license issued by the board, and paying any reasonable fee required by the board. By action of the board, the deadline may be extended through December 31, 2008.
2. The board may not issue or renew the license of a wholesale drug distributor that does not comply with this chapter. The board shall require a separate license for each facility or location where wholesale distribution operations are conducted. An agent or employee of any licensed wholesale drug distributor does not need a license and may lawfully possess pharmaceutical drugs when acting in the usual course of business or employment. The issuance of a license under this chapter does not affect tax liability imposed by the tax department on any wholesaler drug distributor.
3. The board may adopt rules that permit out-of-state wholesale drug distributors to obtain a license on the basis of reciprocity if an out-of-state wholesale drug distributor possesses a valid license granted by another state and the legal standards for licensure in the other state are comparable to the standards under this chapter and the other state extends reciprocity to wholesale drug distributors licensed in this state. However, if the requirements for licensure under this chapter are more restrictive than the standards of the other state, the out-of-state

wholesale drug distributor must comply with the additional requirements of this chapter to obtain a license under this chapter.

4. The board may adopt rules to approve an accreditation body to evaluate a wholesale drug distributor's operations to determine compliance with professional standards, this chapter and any other applicable law, and perform inspections of each facility and location where wholesale distribution operations are conducted by the wholesale drug distributor.

#### **43-15.3-05. Restrictions on transactions.**

1. A wholesale distributor shall receive prescription drug returns or exchanges from a pharmacy or chain pharmacy warehouse under the terms and conditions of the agreement between the wholesale distributor and the pharmacy or between the wholesale distributor and the chain pharmacy warehouse, including the returns of expired, damaged, and recalled pharmaceutical product to either the original manufacturer or a third-party returns processor, and the returns or exchanges are not subject to the pedigree requirement of section 43-15.3-06 if they are exempt from pedigree under the federal food and drug administration's currently applicable guidance for the federal Prescription Drug Marketing Act of 1987 [Pub. L. 100-293; 102 Stat. 95]. Wholesale distributors and pharmacies must ensure that the aspects of this operation are secure and do not permit the entry of adulterated and counterfeit product.
2. A manufacturer or wholesale distributor shall furnish prescription drugs only to a person licensed by the appropriate state licensing authorities. Before furnishing prescription drugs to a person not known to the manufacturer or wholesale distributor, the manufacturer or wholesale distributor shall affirmatively verify that the person is legally authorized to receive the prescription drugs by contacting the appropriate state licensing authorities.
3. Prescription drugs furnished by a manufacturer or wholesale distributor may be delivered only to the premises listed on the license. The manufacturer or wholesale distributor may furnish prescription drugs to an individual or agent of that individual at the premises of the manufacturer or wholesale distributor if:
  - a. The identity and authorization of the recipient are properly established; and
  - b. This method of receipt is employed only to meet the immediate needs of a particular patient of the authorized individual.
4. Prescription drugs may be furnished to a hospital pharmacy receiving area if a pharmacist or authorized receiving personnel signs, at the time of delivery, a receipt showing the type and quantity of the prescription drug so received. Any discrepancy between receipt and the type and quantity of the prescription drug actually received must be reported to the delivering manufacturer or wholesale distributor by the next business day after the delivery to the pharmacy receiving area.
5. A manufacturer or wholesale distributor may not accept payment for or allow the use of a person's credit to establish an account for the

purchase of prescription drugs from any individual other than the owner of record, the chief executive officer, or the chief financial officer listed on the license of an individual legally authorized to receive prescription drugs. Any account established for the purchase of prescription drugs must bear the name of the licensee.

#### **43-15.3-06. Pedigree.**

1. Each person who is engaged in wholesale distribution of prescription drugs, including repackagers but excluding the original manufacturer of the finished form of the prescription drug which leave or have ever left the normal distribution channel, before each wholesale distribution of the drug, must provide a pedigree to the person who receives the drug.
  - a. A retail pharmacy or chain pharmacy warehouse must comply with the requirements of this section only if the pharmacy or chain pharmacy warehouse engages in wholesale distribution of prescription drugs.
  - b. The board shall determine by July 1, 2009, a targeted implementation date for electronic track and trace pedigree technology. The determination must be based on consultation with manufacturers, distributors, and pharmacies responsible for the sale and distribution of prescription drug products in this state. After consultation with interested stakeholders and before implementation of the electronic track and trace pedigree technology, the board must determine that the technology is universally available across the entire prescription pharmaceutical supply chain. The implementation date for the mandated electronic track and trace pedigree technology may not be before July 1, 2010, and may be extended by the board in one year increments if it appears the technology is not universally available across the entire prescription pharmaceutical supply chain.
2. Each person engaged in the wholesale distribution of a prescription drug, including a repackager but excluding the original manufacturer of the finished form of the prescription drug, that is provided a pedigree for a prescription drug and attempts to further distribute that prescription drug shall verify affirmatively before any distribution of a prescription drug occurs that each transaction listed on the pedigree has occurred.
3. The pedigree must:
  - a. Include all necessary identifying information concerning each sale in the chain of distribution of the product from the manufacturer, or the manufacturer's third-party logistics provider, colicensed product partner, or manufacturer's exclusive distributor, through acquisition and sale by any wholesale distributor or repackager, until final sale to a pharmacy or other person dispensing or administering the drug. At minimum, the necessary chain of distribution information must include:
    - (1) The name, address, telephone number, and if available, the e-mail address, of each owner of the prescription drug, and each wholesale distributor of the prescription drug;

- (2) The name and address of each location from which the product was shipped, if different from the owner's;
  - (3) The transaction dates; and
  - (4) A certification that each recipient has authenticated the pedigree.
- b. At minimum, the pedigree must also include the:
  - (1) Name of the prescription drug;
  - (2) Dosage form and strength of the prescription drug;
  - (3) Size of the container;
  - (4) Number of containers;
  - (5) Lot number of the prescription drug;
  - (6) Name of the manufacturer of the finished dosage form; and
  - (7) National drug code (NDC) number.
4. Each pedigree or electronic file must be:
  - a. Maintained by the purchaser and the wholesale distributor for three years from the date of sale or transfer; and
  - b. Available for inspection or use within five business days upon a request of an authorized officer of the law or the board.
5. The board shall adopt rules and a form relating to the requirements of this section.

**43-15.3-07. Order to cease distribution.**

1. The board shall issue an order requiring the appropriate person, including the distributors or retailers of the drug, to immediately cease distribution of the drug within the state if the board finds that there is a reasonable probability that:
  - a. A wholesale distributor, other than a manufacturer, has violated a provision in this chapter or falsified a pedigree or sold, distributed, transferred, manufactured, repackaged, handled, or held a counterfeit prescription drug intended for human use;
  - b. The prescription drug at issue as a result of a violation in subdivision a could cause serious, adverse health consequences or death; and
  - c. Other procedures would result in unreasonable delay.
2. An order under subsection 1 must provide the individual subject to the order with an opportunity for an informal hearing, to be held not later than ten days after the date of the issuance of the order, on the actions

required by the order. If, after providing an opportunity for such a hearing, the board determines that inadequate grounds exist to support the actions required by the order, the board shall vacate the order.

**43-15.3-08. Prohibited acts - Penalty.**

1. Except as otherwise provided under section 43-15.3-09, it is a class B misdemeanor for a person to perform or cause the performance of or aid and abet any of the following acts in this state:
  - a. Failing to obtain a license under this chapter or operating without a valid license when a license is required by this chapter.
  - b. If the requirements of subsection 1 of section 43-15.3-05 are applicable and are not met, purchasing or otherwise receiving a prescription drug from a pharmacy.
  - c. If a state license is required under subsection 2 of section 43-15.3-05, selling, distributing, or transferring a prescription drug to a person that is not authorized under the law of the jurisdiction in which the person receives the prescription drug to receive the prescription drug.
  - d. Failing to deliver prescription drugs to specified premises, as required by subsection 3 of section 43-15.3-05.
  - e. Accepting payment or credit for the sale of prescription drugs in violation of subsection 5 of section 43-15.3-05.
  - f. Failing to maintain or provide pedigrees as required by this chapter.
  - g. Failing to obtain, pass, or authenticate a pedigree, as required by this chapter.
  - h. Providing the board or any of the board's representatives or any federal official with false or fraudulent records or making false or fraudulent statements regarding any matter within the provisions of this chapter.
  - i. Obtaining or attempting to obtain a prescription drug by fraud, deceit, misrepresentation, or engaging in misrepresentation or fraud in the distribution of a prescription drug.
  - j. Except for the wholesale distribution by manufacturers of a prescription drug that has been delivered into commerce pursuant to an application approved under federal law by the federal food and drug administration, manufacturing, repacking, selling, transferring, delivering, holding, or offering for sale any prescription drug that is adulterated, misbranded, counterfeit, suspected of being counterfeit, or has otherwise been rendered unfit for distribution.
  - k. Except for the wholesale distribution by a manufacturer of a prescription drug that has been delivered into commerce under an application approved under federal law by the federal food and

drug administration, adulterating, misbranding, or counterfeiting any prescription drug.

- l. Receiving any prescription drug that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit, or suspected of being counterfeit, and the delivery or proffered delivery of such drug for pay or otherwise.
  - m. Altering, mutilating, destroying, obliterating, or removing the whole or any part of the labeling of a prescription drug or the commission of any other act with respect to a prescription drug that results in the prescription drug being misbranded.
2. The prohibited acts in subsection 1 do not include a prescription drug manufacturer or agent of a prescription drug manufacturer obtaining or attempting to obtain a prescription drug for the sole purpose of testing the prescription drug for authenticity.

#### **43-15.3-09. Penalties.**

1. The board may impose the following sanctions if, after a hearing under chapter 28-32, the board finds that a person has violated section 43-15.3-08:
  - a. Revoke the wholesale drug distributor's license issued under this chapter if the person is a wholesale drug distributor; or
  - b. Assess a civil penalty against the person. A civil penalty assessed may not exceed ten thousand dollars per violation.
2. The board, upon a showing of a violation of this chapter, may revoke, suspend, or limit a license issued under this chapter after a proceeding under chapter 28-32. After a proceeding under chapter 28-32, the board may assess a civil penalty against a licensed wholesale drug distributor of not more than ten thousand dollars for each occurrence. If the licensed wholesale drug distributor fails to pay the civil penalty within the time specified by the board, the board may suspend the license without additional proceedings.
3. Upon application by the board, a court may grant an injunction, a restraining order, or other order to enjoin a person from offering to engage or engaging in the performance of any practices for which a permit or license is required by any applicable federal or state law including this chapter, upon a showing that the practices were or are likely to be performed or offered to be performed without a permit or license. An action brought under this subsection must be commenced either in the county where the conduct occurred or is likely to occur or in the county in the state where the defendant resides. An action brought under this subsection is in addition to any other penalty provided by law and may be brought concurrently with other actions to enforce this chapter.
4. A person that knowingly purchases or receives a prescription drug through any source other than a person licensed under this chapter, including a wholesale distributor, manufacturer, pharmacy distributor, or

pharmacy commits a class A misdemeanor. A subsequent unrelated violation of this subsection is a class C felony.

5. A person who knowingly or intentionally engages in the wholesale distribution of a prescription drug without a license issued under this chapter commits a class C felony. A person is guilty of a class C felony if that person engages in the wholesale distribution of a prescription drug and with intent to defraud or deceive fails to obtain or deliver to another person a complete and accurate required pedigree concerning a prescription drug before obtaining the prescription drug from another person or transferring the prescription drug to another person or falsely swears or certifies that the person has authenticated any documents to the wholesale distribution of prescription drugs.
6. A person is guilty of a class C felony if that person engages in the wholesale distribution of a prescription drug and knowingly or intentionally:
  - a. Destroys, alters, conceals, or fails to maintain a complete and accurate required pedigree concerning a prescription drug in the person's possession;
  - b. Purchases or receives prescription drugs from a person not authorized to distribute prescription drugs in wholesale distribution;
  - c. Sells, barter, brokers, or transfers a prescription drug to a person not authorized to purchase the prescription drug in the jurisdiction in which the person receives the prescription drug in a wholesale distribution;
  - d. Forges, counterfeits, or falsely creates a pedigree;
  - e. Falsely represents a factual matter contained in a pedigree; or
  - f. Fails to record material information required to be recorded in a pedigree.
7. A person is guilty of a class C felony if that person engages in the wholesale distribution of a prescription drug and possesses a required pedigree concerning a prescription drug, knowingly or intentionally fails to authenticate the matters contained in the pedigree as required, and distributes or attempts to further distribute the prescription drug.

Approved March 29, 2007  
Filed March 28, 2007

**CHAPTER 368****HOUSE BILL NO. 1293**

(Representatives Keiser, Porter)

**DENTAL PRACTICE EXEMPTIONS**

AN ACT to create and enact a new section to chapter 43-17 and two new subsections to section 43-28-02 of the North Dakota Century Code, relating to the application of topical fluoride varnish and exemptions to the regulation of dentists; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 43-17 of the North Dakota Century Code is created and enacted as follows:

**Topical fluoride varnish.** A licensed physician or physician assistant may apply topical fluoride varnish to an individual in accordance with rules adopted by the board.

<sup>193</sup> **SECTION 2.** Two new subsections to section 43-28-02 of the North Dakota Century Code are created and enacted as follows:

To a registered nurse, licensed practical nurse, registered dental hygienist, or registered dental assistant who is applying topical fluoride varnish to an individual and is acting under the direct or general supervision of a physician or licensed dentist if the registered nurse, licensed practical nurse, registered dental hygienist, or registered dental assistant has successfully completed a training program approved by the board.

To an advanced practice registered nurse licensed under chapter 43-12.1 who is applying topical fluoride varnish to an individual and is acting within the scope of practice of the advanced practice registered nurse and has successfully completed a training program approved by the board.

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

Approved April 9, 2007

Filed April 10, 2007

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<sup>193</sup> Section 43-28-02 was also amended by section 6 of House Bill No. 1313, chapter 374.



**CHAPTER 369****SENATE BILL NO. 2060**

(Government and Veterans Affairs Committee)  
(At the request of the State Board of Plumbing)

**PLUMBING BOARD AND CODE VIOLATIONS**

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

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

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

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

<sup>194</sup> **SECTION 2. AMENDMENT.** Section 43-18-24 of the North Dakota Century Code is amended and reenacted as follows:

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

**SECTION 3. LEGISLATIVE COUNCIL STUDY - CRIMINAL PENALTIES FOR VIOLATING OCCUPATIONAL LICENSURE LAWS AND RULES.** The legislative council shall consider studying, during the 2007-08 interim, the laws providing criminal penalties for violation of the state's laws and administrative rules regulating occupations and professions. The study must include consideration of whether it is the desired public policy of this state to have laws that create criminal penalties applicable to entire chapters of the North Dakota Century Code and entire

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<sup>194</sup> Section 43-18-24 was also amended by section 7 of House Bill No. 1019, chapter 19.

titles of the North Dakota Administrative Agencies Practice Act regulating occupations and professions. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Approved May 1, 2007

Filed May 2, 2007

**CHAPTER 370****HOUSE BILL NO. 1119**

(Industry, Business and Labor Committee)

(At the request of the State Real Estate Commission)

**REAL ESTATE COMMISSION EXECUTIVE DIRECTOR  
AND LICENSING**

AN ACT to amend and reenact sections 43-23-03, 43-23-05.1, and 43-23-10, subdivision o of subsection 1 of section 43-23-11.1, section 43-23-16, and subsection 5 of section 43-23.2-02 of the North Dakota Century Code, relating to the state real estate commission.

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

**SECTION 1. AMENDMENT.** Section 43-23-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-03. Commission office - ~~Secretary-treasurer~~ Executive director.**

The commission shall employ a ~~secretary-treasurer~~ an executive director who shall furnish bond as required by the commission and who shall keep a record of all proceedings, transactions, communications and official acts of the commission, be custodian of all moneys received for licenses which must, by the ~~secretary-treasurer~~ executive director, be deposited for safekeeping in depositories designated by the commission. The ~~secretary-treasurer~~ executive director must be custodian of all records of the commission and perform such other duties as the commission may require. The commission is authorized to fix the salary of the ~~secretary-treasurer~~ executive director, to employ such other employees as may be necessary to properly carry out the provisions of this chapter, to fix salaries and prescribe duties of such employees and to make such other expenditures as are necessary to carry out the provisions of this chapter. The commission shall meet annually and upon call by the ~~secretary-treasurer~~ executive director upon a written request of three or more members of the commission. The place of meeting of the said commission must be at the office of the ~~secretary-treasurer~~ executive director. The location of the office of the ~~secretary-treasurer~~ executive director must be at such places within the state as the commission may designate. The commission shall maintain all files, records, and property of the commission at the office of the ~~secretary-treasurer~~ executive director.

**SECTION 2. AMENDMENT.** Section 43-23-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-05.1. ~~Salesperson license issued to an organization~~ Organization of salesperson or broker associate permitted to be licensed - Fees.**

1. The commission may ~~grant license an organization of a salesperson license to an organization or broker associate~~ if:
  - a. The organization is owned solely by ~~one~~ an individual who is licensed as a salesperson or broker associate, or by that individual and that individual's spouse, or by that individual and other

salespersons and broker associates within the same firm as that individual;

- b. The organization does not engage in any real estate ~~transaction~~ transactions as a third-party agent or in any other capacity requiring a license under this chapter; and
  - c. The organization does not advertise or otherwise portray to the public that the organization is a real estate broker or real estate brokerage firm.
2. The employing or associating broker of a salesperson ~~that is or broker associate who is part of~~ an organization is not relieved of any obligation to supervise the employed or associated salesperson or broker associate or of any other requirements under this chapter.
  3. An individual who forms a ~~salesperson~~ an organization is not by nature of that act relieved of any personal liability for licensed activities.
  4. The commission may adopt rules establishing a one-time license fee for an organization licensed as a salesperson or broker associate.

**SECTION 3. AMENDMENT.** Section 43-23-10 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-10. Nonresident brokers - Reciprocity - Consent to service.** A nonresident broker regularly engaged in the real estate 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, 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 by another state as satisfactorily qualifying the nonresident broker for license as a broker; provided, that the nonresident broker has qualified for license in the broker's own state and also that 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 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~~ executive director, 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. The consent must be duly acknowledged. Any service of process or pleading must be by duplicate copies, one of which must be filed in the office of the commission and the other immediately forwarded by registered mail to the last-known main office of the applicant against whom said process or pleading is directed, and no default in any such proceedings or action may be taken except upon affidavit or certificate of the commission or the ~~secretary-treasurer~~ executive director, that a copy of said process or pleading was mailed to the defendant as herein required, and no judgment by default may 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 4. AMENDMENT.** Subdivision o of subsection 1 of section 43-23-11.1 of the North Dakota Century Code is amended and reenacted as follows:

- o. Failure by a broker to deliver to the ~~seller party or parties~~ represented by the broker a complete detailed closing statement in every real estate transaction, at the time said transaction is consummated, a ~~complete, detailed closing statement~~, showing all of the receipts and disbursements handled by such broker for the ~~seller~~; also failure to deliver to the ~~buyer~~ a complete statement showing all money received in said transaction from such ~~buyer~~ and how and for what the same was disbursed ~~party or parties~~ represented by the broker, and to retain true copies of such statements in the broker's files.

**SECTION 5. AMENDMENT.** Section 43-23-16 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-16. Licensee list.** The ~~secretary-treasurer~~ executive director shall publish, at least annually, a list of the names and addresses of all licensees licensed by the board under the provisions of this chapter, together with such other information relative to the enforcement of the provisions of this chapter as the board may deem of interest to the public. One of such lists must be mailed to the recorder in each county, unless the board of county commissioners designates a different official, and must be held as a public record. Such lists must also be ~~mailed~~ provided by the ~~secretary-treasurer~~ executive director to any person in this state upon request, and to all licensed brokers without charge.

**SECTION 6. AMENDMENT.** Subsection 5 of section 43-23.2-02 of the North Dakota Century Code is amended and reenacted as follows:

5. The ~~secretary-treasurer~~ executive director of the commission shall furnish a bond in the amount of sixty thousand dollars, upon such conditions as the commission may prescribe.

Approved March 29, 2007

Filed March 28, 2007

**CHAPTER 371****SENATE BILL NO. 2168**

(Senators J. Lee, Tallackson)  
(Representatives Carlson, Dietrich, Potter, Weiler)

**REAL ESTATE COMMISSION INSURANCE COVERAGE**

AN ACT to amend and reenact section 43-23-23 of the North Dakota Century Code, relating to errors and omissions coverage offered by the real estate commission.

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

**SECTION 1. AMENDMENT.** Section 43-23-23 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-23. Errors and omissions coverage not required if premium limit unobtainable.** If the real estate commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable premium not to exceed one hundred twenty-five dollars, the errors and omissions insurance requirement of this section does not apply during the year for which coverage cannot be obtained.

Approved April 9, 2007  
Filed April 10, 2007

**CHAPTER 372****SENATE BILL NO. 2343**  
(Senators Tallackson, Freborg)  
(Representatives DeKrey, Kretschmar)**SUBDIVIDED LANDS DISPOSITION ACT**  
**REGISTRATION EXEMPTIONS**

AN ACT to create and enact a new subsection to section 43-23.1-05 of the North Dakota Century Code, relating to exemptions for registration provisions of the Subdivided Lands Disposition Act.

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

**SECTION 1.** A new subsection to section 43-23.1-05 of the North Dakota Century Code is created and enacted as follows:

Unless the method of disposition is adopted for the purpose of evasion of this chapter, the registration provisions of this chapter do not apply to the sale or lease of any improved land on which there is a residential, commercial condominium, or industrial building or the sale or lease of land under a contract obligating the seller or lessor to erect such a building thereon within a period of two years.

Approved April 12, 2007  
Filed April 13, 2007

**CHAPTER 373****SENATE BILL NO. 2125**

(Industry, Business and Labor Committee)

(At the request of the North Dakota Real Estate Appraiser Qualifications and Ethics Board)

**REAL ESTATE APPRAISER PRACTICE**

AN ACT to amend and reenact section 43-23.3-01, subsection 1 of section 43-23.3-03, sections 43-23.3-04, 43-23.3-06, 43-23.3-07, 43-23.3-08, and 43-23.3-09, subsection 1 of section 43-23.3-11, sections 43-23.3-13, 43-23.3-14, 43-23.3-15, 43-23.3-16, 43-23.3-17, and 43-23.3-18, subsection 2 of section 43-23.3-22, and section 43-23.3-23 of the North Dakota Century Code, relating to real estate appraisers and the practice of real estate appraisal.

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

**SECTION 1. AMENDMENT.** Section 43-23.3-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-01. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Analysis" means a study of real estate other than estimating value.
2. "Appraisal" means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, real estate. An appraisal may be classified by subject matter into either a valuation or an analysis.
3. "Appraisal assignment" means an engagement for which a person is employed or retained to act, or would be perceived by the public as acting, as a disinterested party in rendering an unbiased supportable appraisal.
4. "Appraisal foundation" means the appraisal foundation incorporated as an Illinois corporation on November 30, 1987.
5. "Appraisal report" means a ~~written~~ any communication of an appraisal.
6. "Appraisal subcommittee" means the appraisal subcommittee of the federal financial institutions examination council.
7. "Appraiser" means a person who engages in appraisal activity for valuable consideration.
8. "Apprentice appraiser" means a person who ~~is in training to obtain a license~~ holds a valid permit as an apprentice appraiser.
9. "Board" means the North Dakota real estate appraiser qualifications and ethics board.



10. "Certified appraiser" means a person who ~~develops and communicates appraisals and who~~ holds a valid permit as a certified residential or general appraiser.
11. "Certified general appraiser" means a person who holds a valid permit as a certified general appraiser.
12. "Certified residential appraiser" means a person who holds a valid permit as a certified residential appraiser.
13. "Licensed appraiser" means a person who holds a valid permit as a licensed appraiser ~~license~~.
- ~~42.~~ 14. "Permit" means the document issued by the board, verifying that the person named on the permit has fulfilled all prerequisites to practice either as an apprentice appraiser, a licensed appraiser, or a certified appraiser.
- ~~43.~~ 15. "Real estate" means an identified parcel or tract of land including improvements, and interests, benefits, and rights inherent in the ownership of real estate.
44. 16. "Uniform standards of professional appraisal practices" means standards of appraisal promulgated by the appraisal foundation as adopted and modified by the board. The standards adopted and modified by the board must meet the minimum standards adopted by the appraisal foundation.
- ~~45.~~ 17. "Valuation" means an estimate of the value of real estate or real property.

**SECTION 2. AMENDMENT.** Subsection 1 of section 43-23.3-03 of the North Dakota Century Code is amended and reenacted as follows:

1. The board, or its designated representative, shall:
  - a. Define apprentice appraiser, licensed appraiser, certified residential appraiser, and certified general appraiser, determine the type of educational experience, appraisal experience, and equivalent experience that meet the requirements of this chapter, and establish application procedures.
  - b. Establish examination specifications for each category of licensed and certified appraiser and administer examinations.
  - c. Approve or disapprove applications for ~~licensure and certification permits~~, issue pocket cards and permits to practice, and maintain a registry of the names and addresses of individuals ~~licensed and certified~~ holding permits.
  - d. Discipline permittees.
  - e. Hold meetings, hearings, and examinations in places and at times as it designates and maintain records of board activities.

- f. Adopt rules, pursuant to chapter 28-32, necessary to implement this chapter or carry out the requirements imposed by federal law.

**SECTION 3. AMENDMENT.** Section 43-23.3-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-04. Permit required - Exemptions.** Except as provided in this section, a person may not directly or indirectly engage in, advertise, conduct the business of, or act in any capacity as a an apprentice, licensed, or certified appraiser without first obtaining a permit as provided in this chapter. An appraiser, apprenticed, licensed, or certified in another state may not engage in, advertise, conduct the business of, or act in any capacity as an appraiser in this state without first obtaining a temporary permit under section 43-23.3-11. This chapter does not apply to a licensed real estate broker or salesperson who, in the ordinary course of business, gives an opinion to a potential seller or third party as to the recommended listing price of real estate or an opinion to a potential purchaser or third party as to the recommended purchase price of real estate. However, the opinion as to the listing price or the purchase price may not be referred to as an appraisal. This chapter does not apply to a person who, in the ordinary course of business, gives an opinion of the value of real estate to that person's employer.

**SECTION 4. AMENDMENT.** Section 43-23.3-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-06. Classes of permits.** The board may issue apprentice, license, and certification permits for appraisers.

1. An apprentice appraiser must meet the minimum requirements established by the board for a permit. An apprentice appraiser may only assist a licensed or a certified appraiser in the performance of an appraisal assignment.
2. A licensed appraiser must meet the minimum requirements established by the board for a permit ~~relating to licensed appraisers.~~
3. A certified residential appraiser must meet the ~~appraisal foundation~~ minimum requirements established by the board for a permit relating to the appraisal of all types of real property. The board's requirements may not exceed the appraisal foundation qualification criteria. The board shall review periodically the appraisal foundation appraisal qualification criteria to ensure the board's rules do not exceed the appraisal qualification criteria.
4. A certified general appraiser must meet the minimum requirements established by the board for a permit. The board's requirements may not exceed the appraisal foundation qualification criteria. The board shall review periodically the appraisal foundation appraisal qualification criteria to ensure the board's rules do not exceed the appraisal qualification criteria.

**SECTION 5. AMENDMENT.** Section 43-23.3-07 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-07. Examination requirement.** The board shall issue a permit to practice as a licensed, certified residential, or a certified general appraiser to an

individual who has demonstrated the following qualifications through a written examination process:

1. Knowledge of technical terms used in or related to real estate appraising, appraisal report writing, and economic concepts relating to real estate.
2. Understanding of the principles of land economics, appraisal processes, and of problems likely to be encountered in gathering, interpreting, and processing of data in carrying out appraisal disciplines.
3. Understanding of the uniform standards of professional appraisal practices.
4. Knowledge of theories of depreciation, cost estimating, methods of capitalization, the mathematics of real estate appraisal, and other principles and procedures determined by the board to be appropriate for the appreciable classification of permit.
5. Basic understanding of real estate law.
6. Understanding of the types of misconduct for which disciplinary proceedings may be initiated against an appraiser.

**SECTION 6. AMENDMENT.** Section 43-23.3-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-08. Application prerequisites.**

4. An applicant for a permit as an apprentice, licensed, certified residential, or certified general appraiser must ~~have a high school education or its equivalent and must~~ successfully complete the education requirements established by the board.
2. An applicant for a permit to practice as a licensed appraiser must have a high school education or its equivalent. In addition, an applicant must have successfully completed the minimum education requirements established by the appraisal foundation and the board.
3. An applicant for a permit to practice as a certified appraiser must have a high school education or its equivalent. In addition, an applicant must have successfully completed the minimum education requirements established by the appraisal foundation and the board.

**SECTION 7. AMENDMENT.** Section 43-23.3-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-09. Appraisal experience.**

4. The board may issue a permit to practice as a licensed, certified residential, or certified general appraiser to an individual who possesses the minimum experience requirements established by ~~the appraisal foundation and~~ the board.
2. ~~The board may issue a permit to practice as a certified appraiser to an individual who possesses the minimum experience requirements~~

~~established by the appraisal foundation and the board.~~ The board may require an applicant to furnish, under oath, a detailed listing of the appraisal reports or file memoranda for which appraisal experience is claimed by the applicant. Upon request, the applicant shall provide to the board copies of appraisal reports or other documents that the applicant has assisted in preparing.

**SECTION 8. AMENDMENT.** Subsection 1 of section 43-23.3-11 of the North Dakota Century Code is amended and reenacted as follows:

1. The board may issue a temporary permit to an applicant who is apprenticed, licensed, or certified in good standing by another state. The board may deny a temporary permit to an applicant whose permit, apprenticeship, license, or certification was revoked, suspended, or otherwise subjected to discipline by any state or jurisdiction.

**SECTION 9. AMENDMENT.** Section 43-23.3-13 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-13. Principal place of business.** ~~An appraiser~~ A permittee shall notify the board of the address of the ~~appraiser's~~ permittee's place of business. Within twenty days of a change in the address of the place of business, the ~~appraiser~~ permittee shall give written notification of the change to the board and pay the change of address fee.

**SECTION 10. AMENDMENT.** Section 43-23.3-14 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-14. Permit number displayed with signature.** ~~An appraiser~~ A permittee shall place the ~~appraiser's~~ permittee's permit number adjacent to the ~~appraiser's~~ permittee's signature on an appraisal report, contract, or other writing used by the ~~appraiser~~ permittee in conducting appraisal activities.

**SECTION 11. AMENDMENT.** Section 43-23.3-15 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-15. Use of designation.** The terms "apprentice appraiser", "licensed appraiser", "certified residential appraiser", "certified general appraiser", and "certified appraiser" may only be used to refer to an individual who holds a permit under this chapter and may not be used following or immediately in connection with the name or signature of any other individual or person or in a manner that might be interpreted as referring to any other individual or person other than the individual who holds the permit. This section does not prohibit a licensed or certified appraiser from signing an appraisal report on behalf of a corporation, limited liability company, partnership, or firm.

**SECTION 12. AMENDMENT.** Section 43-23.3-16 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-16. Action for fee.** No claim for relief may be instituted in any court of this state for compensation for an act done or service rendered as ~~either a an~~ an apprentice, licensed, or a certified appraiser unless the appraiser held a permit to practice under this chapter at the time of offering to perform the act or service or procuring a promise to contract for the payment of compensation for a contemplated act or service as a an apprentice, licensed, or a certified appraiser.

**SECTION 13. AMENDMENT.** Section 43-23.3-17 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-17. Retention of records.** A An apprentice, licensed<sub>1</sub> or certified appraiser shall retain, for at least five years, originals or copies of all written contracts engaging the ~~appraiser's permittee's~~ services for appraisal work and all reports and supporting data assembled and formulated by the ~~appraiser permittee~~ in preparing the reports. The period for retention of records applies to each engagement of the services of the ~~appraiser permittee~~ and commences upon the date of the submission of the appraisal to the client unless, within that period, the ~~appraiser permittee~~ is notified that the appraisal report is involved in litigation, in which event the period for the retention of records commences on the date of the final disposition of the litigation. The ~~appraiser permittee~~ shall make available for inspection and copying by the board on reasonable notice all records required to be maintained.

**SECTION 14. AMENDMENT.** Section 43-23.3-18 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-18. Standards of professional appraisal practice.** A An apprentice, licensed ~~and, or~~ certified appraiser shall comply with the standards of professional appraisal practice and ethical rules specified by the uniform standards of professional appraisal practice and all other standards and ethical requirements adopted by the appraisal foundation.

**SECTION 15. AMENDMENT.** Subsection 2 of section 43-23.3-22 of the North Dakota Century Code is amended and reenacted as follows:

2. In a disciplinary proceeding based upon a civil judgment, the ~~appraiser permittee~~ must be afforded an opportunity to present matters in mitigation and extenuation, but may not collaterally attack the civil judgment.

**SECTION 16. AMENDMENT.** Section 43-23.3-23 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-23. Penalties.** A person acting or purporting to act as a an apprentice, licensed<sub>1</sub> or a certified appraiser without holding a permit to practice is guilty of a class A misdemeanor. An appraiser, apprenticed, licensed<sub>1</sub> or certified in another state<sub>1</sub> who engages in, advertises, conducts the business of, or acts in any capacity as an appraiser without first obtaining a temporary permit is guilty of a class A misdemeanor. In addition to any other penalty, a person receiving any money or other compensation in violation of this chapter is subject to a penalty of not less than the amount of the sum of money received and not more than three times the sum in the discretion of the court.

Approved April 13, 2007  
Filed April 16, 2007

## CHAPTER 374

### HOUSE BILL NO. 1313

(Representatives Kasper, Dosch, Grande, Ruby)  
(Senators Cook, Wardner)

### DENTIST REGULATION

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24 and two new sections to chapter 43-28 of the North Dakota Century Code, relating to criminal background checks for dentists and powers of the board of dental examiners; and to amend and reenact sections 43-20-12.2 and 43-20-13, subsection 1 of section 43-20-13.1, and sections 43-28-01, 43-28-02, 43-28-04, 43-28-05, 43-28-10, 43-28-11, 43-28-15, 43-28-17, and 43-28-18 of the North Dakota Century Code, relating to the regulation of dentists and dental assistants.

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

<sup>195</sup> **SECTION 1.** A new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code is created and enacted as follows:

The board of dental examiners for investigations of applicants or dentists under section 9 of this Act, except that criminal history record checks need not be made unless required by the board.

**SECTION 2. AMENDMENT.** Section 43-20-12.2 of the North Dakota Century Code is amended and reenacted as follows:

**43-20-12.2. Notice to board of change of address.** A licensed dental hygienist shall notify the ~~secretary-treasurer~~ executive director of the board of dental examiners of any new address within thirty days of the address change. The notice required under this section must be given by certified mail, return receipt requested. A licensed dental hygienist may not practice in this state for more than thirty days after the change of address without complying with this section.

**SECTION 3. AMENDMENT.** Section 43-20-13 of the North Dakota Century Code is amended and reenacted as follows:

**43-20-13. Dental assistant - Scope of permitted practice.** A dental assistant is an auxiliary to the practice of dentistry. To the extent applicable and to the extent they are not inconsistent with this chapter, the requirements and rules adopted by the board of dental examiners under chapter 43-28 apply to the practice of dental assistants. A dentist may delegate to a dental assistant who is under that dentist's direct, indirect, or general supervision, procedures over which the dentist exercises full responsibility as provided by rules adopted by the board of dental

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<sup>195</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1455, chapter 367, section 2 of House Bill No. 1490, chapter 70, section 1 of Senate Bill No. 2037, chapter 491, section 3 of Senate Bill No. 2260, chapter 115, and section 4 of Senate Bill No. 2260, chapter 115.

~~examiners. A dental assistant may perform any delegated procedure over which the dentist exercises direct, indirect, or general supervision as permitted by rules adopted by the board of dental examiners.~~

**SECTION 4. AMENDMENT.** Subsection 1 of section 43-20-13.1 of the North Dakota Century Code is amended and reenacted as follows:

1. At least thirty days before January first of each year the board of dental examiners shall send a renewal notice that includes an affidavit for continuing education reporting and an application for registration renewal to each registrant at the registrant's last place of residence as noted in the records of the board. If a ~~licensee~~ registrant fails to pay the fee for the renewal of the certificate of registration on or before the due date of the payment, after thirty days' written notice of the default, the board may cancel the ~~license~~ registration without a hearing. The board shall record the cancellation and notify the dental assistant of the cancellation. Each individual registered as a dental assistant shall provide the board evidence satisfactory to the board that the individual has attended or participated in the amount of continuing education as is required by the board. The board may establish a minimum continuing education requirement which may not be less than eight hours during a twelve-month registration. The board may accept for compliance with the continuing education requirement any of the following activities which may contribute directly to the dental education of the registrant:
  - a. Proof of attendance at a lecture, study club, college postgraduate course, or scientific session of a convention.
  - b. Proof of research, graduate study, teaching, or service as a clinician.
  - c. Proof of any other continuing education approved by the board.

**SECTION 5. AMENDMENT.** Section 43-28-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-01. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Advertising" means to invite the attention of or give notice to the public, by any means, medium, or manner whatsoever of any fact, information, or data pertaining to or being conducive of the practice of dentistry in this state.
2. ~~The "board"~~ "Board" means the state board of dental examiners.
3. "Certificate of registration" means a written statement of the board declaring that a licensed dentist has paid the biennial registration fee required by this chapter.
4. ~~"Legal entity" includes foreign and domestic corporations, foreign and domestic limited liability companies, partnerships, trade or firm names and public and private institutions~~ "Dentist" means an individual who has a license to practice in this state and who holds a valid biennial certificate of registration.

5. "License" means the right, authority, or permission granted by the ~~state board of dental examiners~~ to practice dentistry in this state.
6. For the purposes of this chapter, the term "practice of dentistry" includes examination, diagnosis, treatment, repair, administration of local or general anesthetics, prescriptions, or surgery of or for any disease, disorder, deficiency, deformity, condition, lesion, injury, or pain of the human oral cavity, teeth, gingivae, and soft tissues, and the diagnosis, surgical, and adjunctive treatment of the diseases, injuries, and defects of the upper and lower human jaw and associated structures.

<sup>196</sup> **SECTION 6. AMENDMENT.** Section 43-28-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-02. Exceptions.** The provisions of this chapter do not apply:

1. To the filling of written prescriptions of a licensed and registered dentist by any person ~~or legal entity~~, for the construction, reproduction, or repair of prosthetic dentures, bridges, plates, or appliances, to be used or worn as substitutes for natural teeth, provided, that such person or legal entity may not solicit or advertise, directly or indirectly, by mail, card, newspaper, pamphlet, radio, television, or otherwise to the general public to construct, reproduce, repair prosthetic dentures, bridges, plates, or other appliances to be used or worn as substitutes for natural teeth.
2. To ~~students~~ a student enrolled in and regularly attending any dental college ~~or~~, dental hygiene, or dental assisting program recognized as such by the board, if ~~their~~ the student's acts are done in the dental college ~~or the~~, dental hygiene, or dental assisting program and under the direct supervision of ~~their~~ the student's instructor; or to ~~students~~ a student who ~~are~~ is in training in any dental ~~programs~~ program recognized as such by the board and who ~~are~~ is continuing ~~their~~ the student's training and performing the duties of an extern under the supervision of a licensed and registered dentist who has received approval to supervise an externship by the appropriate accrediting committee, including the board.
3. To a legally qualified and licensed ~~physicians~~ physician, ~~surgeons~~ surgeon, and or other ~~practitioners~~ practitioner authorized by law, who ~~perform~~ in emergency cases performs any act ~~defined herein as~~ within the scope of the practice of dentistry ~~in emergency cases~~.
4. To a duly licensed and registered dentist of another state temporarily operating in this state as a clinician ~~or~~, lecturer, or attendant of an educational program under the auspices of a dental college, a reputable dental society, dental hygienist society, or dental assistant society.
5. To the practice of dentistry in the discharge of their official duties by graduate dentists or dental surgeons in the United States army, navy, air

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<sup>196</sup> Section 43-28-02 was also amended by section 2 of House Bill No. 1293, chapter 368.



force, public health service, coast guard, veterans bureau, or director of the dental division of the state department of health.

**SECTION 7. AMENDMENT.** Section 43-28-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-04. Qualifications and appointment of members of the board - Limited vote.**

1. A ~~person~~ An individual may not be appointed as a dentist member of the board unless that ~~person~~ individual:
  - a. Is a ~~licensed and registered dentist in accordance with~~ licensed and registered under this chapter ~~43-28;~~ and
  - b. Is actively engaged in the practice of dentistry and has been so engaged in this state for at least five years immediately preceding the appointment.
2. A ~~person~~ An individual may not be appointed as the dental hygienist member of the board unless that ~~person~~ individual:
  - a. Is a licensed and registered dental hygienist in accordance with chapter 43-20; and
  - b. Is actively engaged in the practice of dental hygiene and has been so engaged in this state for at least five years immediately preceding the dental hygienist's appointment.
3. A ~~person~~ An individual may not be appointed as the consumer member of the board unless that ~~person~~ individual:
  - a. Has been a resident of North Dakota for five years immediately preceding appointment; ;
  - b. Has no personal or family financial relationship with the dental profession; and
  - c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the spouse of a ~~person~~ an individual engaged in any of those occupations.
4. The dental hygienist and consumer member of the board shall exercise full voting privileges in all areas except that the dental hygienist may not participate in the clinical examination of dentists for licensure and the consumer member may not participate in the clinical examination of dentists or hygienists for licensure.

**SECTION 8. AMENDMENT.** Section 43-28-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-05. Meeting of board - Officers - Bond - Compensation of members - Quorum.** The board shall hold a regular annual meeting at a place designated by the board and special meetings when necessary. At the regular meeting of the board, the members shall elect from their number a president, a member who has at least two years remaining on that member's term, president

elect, a member who has at least three years remaining on that member's term, and a secretary-treasurer. The executive director shall furnish a bond in the amount fixed by the board. Each member of the board shall receive as compensation ~~the sum of one hundred ten dollars~~ for each day actually engaged in the duties of the office per diem at a rate established by the board and reimbursement for expenses as provided in section 54-06-09 while attending meetings of the board. The executive director may be paid an annual salary in an amount determined by the board. Four members of the board constitute a quorum but a smaller number may adjourn from time to time.

**SECTION 9.** A new section to chapter 43-28 of the North Dakota Century Code is created and enacted as follows:

**Fitness - Criminal history record check - Costs.** The board may investigate an applicant's or a dentist's fitness, qualification, and previous professional record and performance. The board may seek information sought under this section from recognized data sources, including the national practitioners data bank, data repositories, licensing and disciplinary authorities of other jurisdictions, professional education and training institutions, liability insurers, health care institutions, and law enforcement agencies. An applicant or a dentist for whom the board is performing an investigation under this section shall cooperate with the board if necessary to access the information sought by the board. The board or the board's investigative disciplinary panels may require an applicant or a dentist who is the subject of a disciplinary investigation to submit to a statewide and nationwide criminal history record check. The criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with a criminal history record check performed under this section are the responsibility of the dentist or applicant.

**SECTION 10. AMENDMENT.** Section 43-28-10 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-10. License and certificate required - Scope of practice.** ~~No~~ A person may not practice dentistry in this state unless:

- 1- ~~The person first obtains a license to practice in this state; and~~
- 2- The person holds a valid biennial certificate of registration that person is a dentist. A dentist shall practice within the scope of that dentist's education, advanced training as recognized by the board and any specialty practice recognized by the American dental association or other professional entity recognized by the board.

**SECTION 11. AMENDMENT.** Section 43-28-11 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-11. Examination required - Application - Qualifications - Fees.** ~~Any person who desires to obtain a license~~ An individual seeking to practice dentistry in this state shall apply to the executive director of the board on forms prescribed by the board and shall submit to an examination by the board. The application must be verified under oath to the effect that all of the statements contained in the application are true of applicant's own knowledge, and must be received by the executive director of the board at least thirty days before the date of the examination. The applicant shall enclose with the application a recent autographed picture of the applicant and an application fee as determined by the board. Additional costs of regional or other state's examinations as set out in section 43-28-12.1 and

chargeable under section 43-28-05 as board member compensation may be assessed against the applicant or applicants. The applicant shall show proof that the applicant:

1. Is a graduate of a dental college recognized by the board.
2. Is a ~~person~~ of good moral character.

**SECTION 12. AMENDMENT.** Section 43-28-15 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-15. Licensure by credential review.** The board may issue a license and certificate of registration to practice dentistry in this state to any ~~person~~ individual who wishes to practice dentistry in North Dakota upon a practical examination, if the ~~person~~ individual:

1. Has been licensed and has been actively practicing dentistry for at least five years immediately preceding application to practice dentistry in another state where the requirements are at least equivalent to those of this state.
2. Is a reputable, competent dentist of good moral character as evidenced by reference letters from three licensed dentists attesting to clinical competence, professional attainment, and good moral character.
3. Pays to the board the fee determined by the board.
4. Delivers to the board a certificate from the examining or licensing board of every state in which the ~~person~~ individual is practicing or is licensed to practice, certifying that the ~~person~~ individual is a licensed and registered dentist in that state, and is of good moral character.
5. Demonstrates the ~~person's~~ individual's ability to the satisfaction of the board.

The requirement of a practical clinical examination to demonstrate competency may be waived by the board if the applicant meets the other requirements of this section.

**SECTION 13. AMENDMENT.** Section 43-28-17 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-17. Failure to pay annual biennial fee - Cancellation of license - Inactive status.** If a licensed dentist fails to pay the biennial fee for the renewal of the certificate of registration on or before the due date of the payment, after thirty days' written notice of the default without proper payment, the board may cancel the license, notify the dentist of the cancellation, and record the cancellation. The payment of the biennial fee within the thirty-day period, with an additional sum determined by the board, will excuse the default. Upon payment of a fee determined by the board, a licensee may request to have the licensee's license placed on inactive status upon expiration of the license. While on inactive status, the licensee may not engage in the practice of dentistry in the state until the individual submits a reinstatement application, pays a renewal fee, and meets any additional requirements established by rule of the board.

**SECTION 14.** A new section to chapter 43-28 of the North Dakota Century Code is created and enacted as follows:

**Duty to report.**

1. A dentist shall report to the board in writing within ninety days of the event any illegal, unethical, or errant behavior or conduct of the dentist, including the following events, proceedings, or formal or informal actions:
  - a. A dental malpractice judgment or malpractice settlement or a final judgment by a court in favor of any party and against the licensee.
  - b. A final disposition regarding the surrender of a license, or adverse action taken against a license by a licensing agency in another state, territory, or country; a governmental agency; a law enforcement agency; or a court for an act or conduct that would constitute grounds for discipline under this chapter.
  - c. A mortality or other incident occurring in an outpatient facility of the dentist which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during or as a direct result of a dental procedure or related use of general anesthesia, deep sedation, conscious sedation with a parenteral drug, or enteral sedation.
2. A dentist shall advise the board in a timely manner if the dentist reasonably believes another dentist has committed an illegal or immoral act or has otherwise failed to make a report as required under subsection 1.

**SECTION 15. AMENDMENT.** Section 43-28-18 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-18. Grounds for revocation or suspension of license and certificate.** The board may revoke, suspend, limit, or restrict the scope of the license and the certificate of registration of any dentist who has:

1. Been guilty of dishonorable, unprofessional, or immoral conduct.
2. Been convicted of an offense determined by the board to have a direct bearing upon the individual's ability to serve the public as a dentist, or the board determines, following conviction for any offense, that the individual is not sufficiently rehabilitated under section 12.1-33-02.1.
3. Been adjudged mentally ill and not judicially restored by the regularly constituted authorities.
4. Been guilty of habitual intemperance or addicted to the use of drugs.
5. Employed or permitted an unlicensed individual to practice dentistry in the office under the dentist's control.
6. Become grossly negligent in the practice of the profession.
7. Practiced fraud and deceit in obtaining the license or in the practice of dentistry.
8. Willfully betrayed confidential relations.

9. Shared any professional fee with anyone or paid anyone for sending or referring patients to the dentist. However, this does not prohibit licensed dentists from practicing in a partnership and sharing one another's professional fees, nor prohibit a licensed dentist from employing any other licensed dentist or licensed dental hygienist.
10. Used any advertising of any character tending to mislead and deceive the public, including advertising the public could reasonably interpret as indicating the dentist is qualified to practice a dental specialty, if the practice of that dental specialty would be outside the scope of practice for which the dentist is qualified to practice.
11. Failed to demonstrate minimum professional competency in certain areas of clinical practice if the clinical deficiency represents a threat to the public but is not so severe as to be termed gross negligence. When those deficiencies are noted, the license and registration may be suspended or restricted in scope until the dentist obtains additional professional training that is acceptable to the board and has demonstrated sufficient improvement in clinical competency to justify reissuance of an unrestricted license and registration.
12. Prescribed, administered, or dispensed medications for reasons or conditions outside the scope of dental practice.
13. Fraudulently, carelessly, negligently, or inappropriately prescribed drugs or medications.
14. Directed auxiliary personnel to perform acts or provide dental services for which the personnel are not licensed or qualified or are prohibited by law or rule.
15. Willfully engaged in fraudulent submission of insurance claims.
16. Made any false or untrue statements in the application for an examination to obtain a license to practice dentistry.
17. Made any false representations that the individual is the holder of a license or certificate of registration to practice dentistry.
18. Made any false claims that the individual is a graduate of a dental college or the holder of any diploma or degree from a dental college.
19. Failed to comply with commonly accepted national infection control guidelines and standards.
20. Abandoned the dentist's practice as defined by rules adopted by the board.
21. ~~Violated this chapter~~ Failed to report to the board as required under section 14 of this Act.

Approved March 9, 2007  
Filed March 12, 2007

**CHAPTER 375****SENATE BILL NO. 2152**

(Senators Nething, J. Lee, Warner)  
(Representatives Pietsch, Price)

**DENTAL LOAN REPAYMENT PROGRAM AND  
GRANTS**

AN ACT to create and enact a new subsection to section 43-28.1-03 and a new section to chapter 43-28.1 of the North Dakota Century Code, relating to selection and eligibility for loan repayment under the dentists' loan repayment program and for new practice grants; to provide for a legislative council study; and to provide an appropriation.

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

**SECTION 1.** A new subsection to section 43-28.1-03 of the North Dakota Century Code is created and enacted as follows:

For the purposes of a dentist selected for loan payment who practices within fifteen miles [24.14 kilometers] of the city limits of Bismarck, Fargo, or Grand Forks, to qualify to receive a yearly disbursement under this chapter during that year of obligated service, the dentist must have:

- a. Received dental medical payments of at least twenty thousand dollars in the form of medical assistance reimbursement; or
- b. Practiced at least two full workdays per week at a public health clinic or at a nonprofit dental clinic that uses a sliding fee schedule to bill the nonprofit dental clinic's patients.

**SECTION 2.** A new section to chapter 43-28.1 of the North Dakota Century Code is created and enacted as follows:

**New practices - Grants.**

1. A dentist who graduated from an accredited dental school within the previous five years and is licensed to practice in North Dakota may submit an application to the state health council for a grant for the purpose of establishing a dental practice in a city in the state which has a population that does not exceed seven thousand five hundred.
2. The state health council may award a maximum of two grants per year and shall establish the criteria for the grant program under subsection 1 which must include:
  - a. A maximum grant award of fifty thousand dollars per applicant;
  - b. A requirement that the community must provide a fifty percent match for a grant;

- c. A requirement that a dentist who receives a grant under this section must use the funds for buildings, equipment, and operating expenses;
- d. A provision that the grant must be distributed in equal amounts over a five-year period; and
- e. A requirement that a dentist selected for a grant under this section must commit to practice in the community for a minimum of five years.

**SECTION 3. LEGISLATIVE COUNCIL STUDY - COMMUNITY HEALTH TRUST FUND.** The legislative council shall consider studying, during the 2007-08 interim, the historic and anticipated uses of funds from the community health trust fund, including a cost-benefit evaluation of past expenditures from the fund, the feasibility and desirability of establishing a strategic plan for future use of the fund, and the sustainability of the fund. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 4. APPROPRIATION.** There is appropriated out of any moneys in the community health trust fund in the state treasury, not otherwise appropriated, the sum of \$60,000, or so much of the sum as may be necessary, to the state department of health for the purpose of funding the new practice grant program, for the biennium beginning July 1, 2007, and ending June 30, 2009.

Approved May 2, 2007  
Filed May 3, 2007

**CHAPTER 376****SENATE BILL NO. 2056**

(Agriculture Committee)

(At the request of the State Board of Veterinary Medical Examiners)

**VETERINARIAN LICENSURE PURPOSE STATEMENT  
REPEAL**

AN ACT to repeal section 43-29-01 of the North Dakota Century Code, relating to the statement of purpose for the licensure of veterinarians.

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

**SECTION 1. REPEAL.** Section 43-29-01 of the North Dakota Century Code is repealed.

Approved April 12, 2007  
Filed April 13, 2007



**CHAPTER 377****HOUSE BILL NO. 1052**

(Agriculture Committee)

(At the request of the State Board of Veterinary Medical Examiners)

**VETERINARIAN LICENSURE**

AN ACT to amend and reenact subsections 1, 2, 5, and 9 of section 43-29-01.1, subsection 1 of section 43-29-07, subsections 1, 2, and 3 of section 43-29-07.2, subsection 11 of section 43-29-13, and subsection 1 of section 43-29-14 of the North Dakota Century Code, relating to the licensure of veterinarians.

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

**SECTION 1. AMENDMENT.** Subsections 1, 2, 5, and 9 of section 43-29-01.1 of the North Dakota Century Code are amended and reenacted as follows:

1. "Accredited ~~or approved~~ college of veterinary medicine" means any veterinary college or division of a university or college which offers the degree of doctor of veterinary medicine or its equivalent and which conforms to the standards required for accreditation ~~or approval~~ by the council on education of the American veterinary medical association.
2. "Accredited program in veterinary technology" means any postsecondary educational program of two or more academic years that ~~has fulfilled the essential criteria established~~ is accredited by the committee on veterinary technician education and activities ~~and approved by~~ of the American veterinary medical association ~~house of delegates~~.
5. "Certificate" means a certificate issued by the educational commission for foreign veterinary graduates or the educational equivalence program of the American association of veterinary state boards, indicating the holder has demonstrated knowledge and skill equivalent to that possessed by a graduate of an accredited ~~or approved~~ college of veterinary medicine.
9. "Veterinarian-client-patient relationship" means:
  - a. ~~The A~~ A veterinarian has assumed the responsibility for making medical judgments regarding the health of an animal and the need for medical treatment, and the client, who is the owner or other caretaker, has agreed to follow the ~~instruction~~ instructions of the veterinarian.
  - b. There is sufficient knowledge of the animal by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal. ~~This means the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal by virtue of an examination of the animal, or by medically~~

~~appropriate and timely visits to the premises where the animal is kept.~~

- c. The practicing veterinarian is readily available for followup in the case of adverse reactions or failure of the regimen of therapy. This relationship exists only when the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal by virtue of an examination of the animal and by medically appropriate and timely visits to the premises where the animal is kept.

**SECTION 2. AMENDMENT.** Subsection 1 of section 43-29-07 of the North Dakota Century Code is amended and reenacted as follows:

1. A person desiring a license to practice veterinary medicine in this state shall make written application to the board. The application must show the applicant is a graduate of an accredited ~~or approved~~ college of veterinary medicine or the holder of a certificate. The application must also show the applicant is a person of good moral character and any other information and proof the board may require. The application must be accompanied by a fee in the amount established by the board. If the board determines an applicant possesses the proper qualifications, the board shall admit the applicant to the next examination. If the applicant is eligible for license without examination under section 43-29-07.2, the board may grant the applicant a license. If an applicant is found not qualified to take the examination or for a license without examination, the board shall immediately notify the applicant in writing of this finding and the grounds of this finding. An applicant found unqualified may request a hearing on the question of the applicant's qualifications.

**SECTION 3. AMENDMENT.** Subsections 1, 2, and 3 of section 43-29-07.2 of the North Dakota Century Code are amended and reenacted as follows:

1. The board shall hold at least two examinations a year ~~and may hold additional examinations as necessary. A person desiring to take an examination shall apply at least thirty days before the date of the examination.~~ The board shall adopt rules governing preparation, administration, and grading of examinations. Examinations must be designed to test the examinee's knowledge of and proficiency in the subjects and techniques commonly taught in veterinary schools. To pass the examination, the examinee must demonstrate scientific and practical knowledge sufficient to prove competency to practice veterinary medicine in the judgment of the board. An examinee must be tested by written examination, supplemented by any oral interview and practical demonstration the board determines necessary. The board may adopt and use the examination prepared by the national board ~~examination committee of veterinary medical examiners.~~ After each examination, the board shall notify each examinee of the result of the examination, and the board shall issue a license to each person who passed the examination. The board shall record each new license and issue a certificate of registration to each new licensee. Any person failing an examination ~~must~~ may be admitted to any subsequent examination on approval by the board and payment of the application fee.

2. The board may issue a license without a written examination to a qualified applicant who furnishes satisfactory proof of graduation from an accredited or approved college of veterinary medicine, or holds a certificate, and who:
  - a. Has for the five years immediately before filing of the application been a practicing veterinarian licensed in a state having license requirements at the time the applicant was first licensed which were substantially equivalent to the requirements of this chapter;
  - b. Has within the three years immediately before filing the application successfully completed the examinations provided by the national board ~~examination committee~~ of veterinary medical examiners; or
  - c. Currently holds a license to practice in at least one state, has active diplomat status in a specialty organization recognized by the American veterinary medical association, and whose practice is limited to the certified specialty in the state in which the specialist is licensed without examination.
3. The board may issue without examination a temporary permit to practice veterinary medicine in this state to:
  - a. A qualified applicant for license pending examination, if the temporary permit expires the day after the notice of results of the first examination given after the permit is issued. A temporary permit may not be issued to an applicant who previously has failed the examination in this or any other state or a foreign country.
  - b. A nonresident veterinarian validly licensed in another state or a foreign country who pays the fee established and published by the board if the temporary permit is issued for a period of no more than sixty days and no more than one permit is issued to a person during each calendar year.
  - c. A senior veterinary student who practices in the office of and under the direct supervision of a licensed veterinarian. A temporary student permit may not exceed six months from its date of issuance and is granted without payment of a fee.
  - d. A graduate of a nonaccredited ~~or unapproved~~ college of veterinary medicine, who has satisfactorily completed the fourth year of clinical study at an accredited or approved college of veterinary medicine, has successfully passed the examination provided by the national board of veterinary medical examiners, and is enrolled in the educational commission for foreign veterinary graduates program. The holder of a temporary permit issued under this subdivision must practice under the supervision of a licensed veterinarian. A temporary permit issued under this subdivision is valid until the holder obtains a certificate or for two years.

**SECTION 4. AMENDMENT.** Subsection 11 of section 43-29-13 of the North Dakota Century Code is amended and reenacted as follows:

11. Any graduate of a foreign college of veterinary medicine who is in the process of obtaining a certificate and is performing duties or actions

assigned by the graduate's instructors in an accredited ~~or approved~~ college of veterinary medicine.

**SECTION 5. AMENDMENT.** Subsection 1 of section 43-29-14 of the North Dakota Century Code is amended and reenacted as follows:

1. The state board of veterinary medical examiners may refuse to issue a license or certificate of registration, or may suspend or revoke a license and certificate of registration, upon any of the following grounds:
  - a. Fraud or deception in procuring the license, including conduct that violates the security or integrity of any licensing examination.
  - b. The use of advertising or solicitation that is false, misleading, or otherwise determined unprofessional under rules adopted by the board.
  - c. Habitual intemperance in the use of intoxicating liquors, or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs.
  - d. Immoral, unprofessional, or dishonorable conduct manifestly disqualifying the licensee from practicing veterinary medicine.
  - e. Incompetence, gross negligence, or other malpractice in the practice of veterinary medicine.
  - f. Employment of unlicensed persons to perform work that under this chapter can lawfully be done only by persons licensed to practice veterinary medicine.
  - g. Fraud or dishonest conduct in applying or reporting diagnostic biological tests, inspecting foodstuffs, or in issuing health certificates.
  - h. Failure of the licensee to keep the premises and equipment used in the licensee's practice in a reasonably clean and sanitary condition and failure to use reasonably sanitary methods in the practice of veterinary medicine.
  - i. Violation of the rules adopted by the board.
  - j. Conviction of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a veterinarian, or when the board determines, following conviction of any offense, that a person is not sufficiently rehabilitated under section 12.1-33-02.1.
  - k. Willful or repeated violations of this chapter or any rule adopted by the board.
  - l. Failure to report, as required by law, or making false report of, any contagious or infectious disease.
  - m. Cruelty to animals.

- n. Revocation of a license to practice veterinary medicine by another state on grounds other than nonpayment of a registration fee.
- o. The use, prescription, or sale of any veterinary prescription drug, or the prescription or an extra-label use of any over-the-counter drug in the absence of a valid veterinarian-client-patient relationship.

Approved March 6, 2007

Filed March 7, 2007

**CHAPTER 378****HOUSE BILL NO. 1125**

(Education Committee)

(At the request of the State Board of Higher Education)

**VETERINARIAN LOAN REPAYMENT PROGRAM**

AN ACT to create and enact chapter 43-29.1 of the North Dakota Century Code, relating to a loan repayment program for veterinarians; and to provide a continuing appropriation.

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

**SECTION 1.** Chapter 43-29.1 of the North Dakota Century Code is created and enacted as follows:

**43-29.1-01. Loan repayment program - Veterinarians - Maximum amount of funds.** Each year the state health council, in consultation with the state board of animal health, shall select from a pool of applicants no more than three veterinarians who shall provide food animal veterinary medicine services to communities in this state. The veterinarians are eligible to receive up to eighty thousand dollars in loan repayment funds. If the state health council accepts any gifts, grants, or donations under this chapter, the council may select additional veterinarians for participation in the loan repayment program under this chapter.

**43-29.1-02. Loan repayment program - Veterinarians - Powers of state health council.** The state health council may:

1. Determine the eligibility and qualifications of an applicant for loan repayment funds under this chapter.
2. Identify communities that are in need of a veterinarian and establish a priority ranking for participation in the program by the selected communities.
3. Create and distribute a loan repayment application.
4. Determine the amount of the loan repayment funds for which a veterinarian is eligible under this chapter and, in making this determination, examine any outstanding education loans incurred by the applicant.
5. Establish conditions regarding the use of the loan repayment funds.
6. Enter a nonrenewable contract with the veterinarian and the selected community to provide to the veterinarian funds for the repayment of education loans in exchange for the veterinarian agreeing to actively practice in the selected community.
7. Receive and use funds appropriated for the program.
8. Enforce any contract under the program.

9. Cancel a contract for reasonable cause.
10. Participate in federal programs that support the repayment of education loans incurred by veterinarians and agree to the conditions of the federal programs.
11. Accept property from an entity.
12. Cooperate with the state department of health to effectuate this chapter.

**43-29.1-03. Veterinarian selection criteria - Eligibility for loan repayment.**

1. In establishing the criteria regarding a veterinarian's eligibility for loan repayment funds under this chapter, the state health council shall:
  - a. Consider the veterinarian's training in food animal veterinary medicine, ability and willingness of the veterinarian to engage in food animal veterinary medicine, and the extent to which such services are needed in a selected community.
  - b. Consider the veterinarian's commitment to serve in a community that is in need of a veterinarian.
  - c. Consider the compatibility of the veterinarian with a selected community.
  - d. Consider the date by which the veterinarian would be available for service to the selected community.
  - e. Consider the veterinarian's competence and professional conduct.
  - f. Give priority to a veterinarian on whose behalf state-funded student support fees have not been paid.
2. A veterinarian who is selected to receive loan repayment funds under this chapter:
  - a. Must have graduated from an accredited college of veterinary medicine; and
  - b. Must be licensed to practice veterinary medicine in this state.
3. Veterinarians selected shall contract to provide full-time veterinary medicine services for two, three, or four years in one or more selected communities.

**43-29.1-04. Community selection criteria.**

1. In selecting a community with a defined need for the services of a veterinarian, the health council shall consider:
  - a. The size of the community and give priority:
    - (1) First to rural communities having a population under five thousand;

- (2) Second to communities having a population between five thousand and ten thousand; and
  - (3) Third to communities having a population greater than ten thousand.
- b. The number of veterinarians practicing in the community and the surrounding area.
- c. The access by residents to veterinarians practicing in the community and the surrounding area.
- d. The degree to which residents support the addition of a veterinarian within the community.
2. The state health council shall give priority for participation to a community that demonstrates a need for a veterinarian.
3. In evaluating communities for participation in this program, the state health council may consult with public and private entities and visit the communities.

**43-29.1-05. Eligible loans.** The state health council may provide for loan repayment funds to a veterinarian who has received an education loan. The council may not provide funds for the repayment of a loan that is in default at the time of the application. The amount of the repayment must be related to the veterinarian's outstanding education loans.

**43-29.1-06. Release from contract obligation.**

1. The state health council shall release a veterinarian from the veterinarian's loan repayment contract without penalty if:
  - a. The veterinarian has completed the service requirements of the contract;
  - b. The veterinarian is unable to complete the service requirement of the contract because of a permanent physical disability;
  - c. The veterinarian demonstrates to the state health council extreme hardship or shows other good cause justifying the release; or
  - d. The veterinarian dies.
2. A decision by the state health council not to release a veterinarian from the veterinarian's loan repayment contract without penalty is reviewable by district court.

**43-29.1-07. Loan repayment.** Upon completing six months of the first year of service, as required by the contract, the veterinarian is eligible to receive a loan payment in an amount up to fifteen thousand dollars. Upon completing a second year of service, as required by the contract, the veterinarian is eligible to receive a loan payment in an amount up to fifteen thousand dollars. Upon completing a third year of service, as required by the contract, the veterinarian is eligible to receive a loan payment in an amount up to twenty-five thousand dollars. Upon completing a fourth year of service, as required by the contract, the veterinarian is eligible to



receive a loan payment in an amount up to twenty-five thousand dollars. All payments under this section must be made to the issuer of the student loan. No individual may receive more than eighty thousand dollars under this section. If an individual fails to complete an entire year of service, the amount repayable under this section for that year must be prorated.

**43-29.1-08. Gifts, grants, and donations - Continuing appropriation.** The state health council may accept any conditional or unconditional gifts, grants, or donations for the purpose of providing funds for the repayment of veterinarians' education loans. If an entity desires to provide funds to the state health council to allow an expansion of the program beyond the three veterinarians contemplated by this chapter, the entity shall commit to fund fully the expansion for a period of four years. The state health council may contract with a public or private entity and may expend any moneys available to the council to obtain matching funds for the purposes of this chapter. During the 2007-09 biennium, the state health department may receive no more than seven percent of the appropriated moneys and the state veterinarian may receive no more than three percent of the appropriated moneys for administration of the loan repayment program. All moneys received as gifts, grants, or donations under this section are appropriated as a continuing appropriation to the state health council for the purpose of providing funds for the repayment of additional veterinarians' education loans.

Approved April 13, 2007

Filed April 16, 2007

**CHAPTER 379****SENATE BILL NO. 2052**

(Judiciary Committee)

(At the request of the Private Investigative and Security Board)

**PRIVATE INVESTIGATIVE LICENSING EXCEPTION**

AN ACT to amend and reenact subsection 8 of section 43-30-02 of the North Dakota Century Code, relating to an exception from private investigative licensing for fire origin and cause investigations.

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

**SECTION 1. AMENDMENT.** Subsection 8 of section 43-30-02 of the North Dakota Century Code is amended and reenacted as follows:

8. An expert who specializes in a specific, limited area of practice, including automotive accident reconstructions, fire ~~cause and origin inspections and cause investigations~~, technical surveillance countermeasures, handwriting analysis, auditor, accountant or accounting clerk performing audits or accounting functions, or other areas of practice covered by other licensure in the state, and other areas determined by the board, that fall within the individual's scope of employment, incidental to the investigative profession.

Approved March 13, 2007

Filed March 14, 2007

**CHAPTER 380****SENATE BILL NO. 2062**

(Judiciary Committee)

(At the request of the Private Investigative and Security Board)

**PROPRIETARY SECURITY OFFICERS**

AN ACT to create and enact a new section to chapter 43-30 of the North Dakota Century Code, relating to proprietary security officers.

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

**SECTION 1.** A new section to chapter 43-30 of the North Dakota Century Code is created and enacted as follows:

**Proprietary security.** A proprietary employer is a person who employs an individual to provide security for that person's own property or protection. A proprietary employer is not required to be licensed as a private security service if the employer does not offer or provide security services to others. Proprietary security employees may be voluntarily registered as security officers under section 43-30-06. In order to be registered as a proprietary security officer, an employee must meet all of the requirements to be registered as a security officer except for:

1. Employment by a licensed private security service; and
2. Supervision by an individual who is licensed to provide security services.

Approved April 10, 2007

Filed April 11, 2007

**CHAPTER 381****SENATE BILL NO. 2055**

(Judiciary Committee)

(At the request of the Private Investigative and Security Board)

**PRIVATE INVESTIGATIVE AND SECURITY BOARD  
PERSONNEL**

AN ACT to amend and reenact section 43-30-04 of the North Dakota Century Code, relating to office personnel hired by the private investigative and security board.

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

**SECTION 1. AMENDMENT.** Section 43-30-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-30-04. Powers of the board.** The board shall establish by rule the qualifications and procedures for classifying, qualifying, licensing, bonding, and regulating persons providing private investigative and security services, including armed security personnel. All rules adopted by the board and appeals therefrom must be in accordance with chapter 28-32. The board may hire office personnel deemed necessary by it for carrying on its official duties and shall set the compensation to be paid to the personnel.

Approved April 5, 2007

Filed April 5, 2007

**CHAPTER 382****HOUSE BILL NO. 1131**

(Natural Resources Committee)

(At the request of the State Department of Health)

**WATER WELL CONTRACTOR AND GEOTHERMAL  
DRILLER CERTIFICATION**

AN ACT to create and enact sections 43-35-15.3, 43-35-18.3, and 43-35-19.3 of the North Dakota Century Code, relating to the state board of water well contractors and geothermal driller certification and standards; and to amend and reenact sections 43-35-03, 43-35-06, 43-35-11, 43-35-12, 43-35-13, 43-35-14, 43-35-21, and 43-35-22 of the North Dakota Century Code, relating to the state board of water well contractors and geothermal system drillers and drilling.

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

**SECTION 1. AMENDMENT.** Section 43-35-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-35-03. State board of water well contractors - Members' appointment - Qualification.** The state board of water well contractors consists 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 geothermal system driller appointed by the governor,~~ 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 43-35-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-35-06. Secretary-treasurer bond.** Promptly upon assuming the office, the secretary-treasurer shall furnish a bond satisfactory to the board for the faithful performance and discharge of the secretary-treasurer's duties in ~~such an amount as may be prescribed~~ determined by the board, the premium ~~therefor~~ for which is to be paid from board funds.

**SECTION 3. AMENDMENT.** Section 43-35-11 of the North Dakota Century Code is amended and reenacted as follows:

**43-35-11. Certificate required.** ~~No~~ A person, partnership, firm, corporation, or limited liability company ~~shall~~ may not engage in the business of water well contracting or water well pump and pitless unit installation, monitoring well contracting, or geothermal system drilling unless certified to do so by the board of water well contractors.

**SECTION 4. AMENDMENT.** Section 43-35-12 of the North Dakota Century Code is amended and reenacted 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, water well pump and pitless unit installers, ~~or~~ monitoring well contractors, ~~or geothermal system drillers~~. 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, water well pump and pitless unit installers, ~~and~~ monitoring well contractors, ~~and geothermal system drillers~~.

**SECTION 5. AMENDMENT.** Section 43-35-13 of the North Dakota Century Code is amended and reenacted as follows:

**43-35-13. Certificate - How obtained - Fee - Bond.**

1. Any person ~~desiring to take who takes~~ the examination to become a certified water well contractor ~~shall must first have completed complete~~ 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 career and technical education program of at least one year in water well construction and shall make application to the board.
2. Any person ~~desiring to take who takes~~ the examination to become a certified water well pump and pitless unit installer ~~shall must first have completed complete~~ 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 career and technical education program of at least one year in water well pump and pitless unit installation.
3. Any person ~~desiring to take who takes~~ the examination to become a certified monitoring well contractor ~~shall must first have completed complete~~ a minimum of one-year apprenticeship or experience in monitoring well construction under the direct supervision of a certified water well contractor or a certified monitoring well contractor or have completed a career and technical education program of at least one year in water well construction or hold a bachelor's degree in engineering or geology from an approved school and shall make application to the board.
4. Any person who takes the examination to become a certified geothermal system driller must first complete either a minimum of one year of apprenticeship under the direct supervision of a certified geothermal system driller or have a minimum of two thousand forty installation hours of experience in geothermal system drilling working under the direct supervision of a certified geothermal system driller, or, in the alternative, must first complete career and technical education relating to geothermal system drilling lasting at least one school year.
5. 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, a monitoring well contractor, or a geothermal system driller, the board shall issue to that person an appropriate certificate upon the applicant's executing and filing with the board a bond as required in this chapter. 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 transferable.

**SECTION 6. AMENDMENT.** Section 43-35-14 of the North Dakota Century Code is amended and reenacted as follows:

**43-35-14. Bond required.** Before receiving a certificate under this chapter, a qualified applicant shall execute and deposit with the board a surety bond in the amount of two thousand dollars conditioned for the faithful performance of all water well, monitoring well, ~~or~~ pump and pitless unit, or geothermal system installation contracts undertaken by the applicant and the strict compliance with this chapter.

**SECTION 7.** Section 43-35-15.3 of the North Dakota Century Code is created and enacted as follows:

**43-35-15.3. Certification of persons engaged in drilling of geothermal systems before 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 geothermal system drilling as an occupation for at least one year before July 1, 2007, if the application is made before July 1, 2008.

**SECTION 8.** Section 43-35-18.3 of the North Dakota Century Code is created and enacted as follows:

**43-35-18.3. Firm engaged in drilling of geothermal systems to employ certified driller - Exception.** A person may not engage in the business of drilling geothermal systems in the state after July 1, 2008, unless a certified driller, who is responsible for the proper drilling of the geothermal system, is in charge of the drilling. This chapter does not prohibit a person from drilling geothermal systems on that person's own premises for that person's own use.

**SECTION 9.** Section 43-35-19.3 of the North Dakota Century Code is created and enacted as follows:

**43-35-19.3. Standards for drilling of geothermal systems.** All drilling of geothermal systems must comply with the rules adopted by the state geologist and the board.

**SECTION 10. AMENDMENT.** Section 43-35-21 of the North Dakota Century Code is amended and reenacted as follows:

**43-35-21. Certification to nonresidents - Reciprocity.** To the extent other states providing for the certification of water well contractors, monitoring well contractors, ~~or~~ water well pump and pitless unit installers, or geothermal system drillers provide for similar action, the board may grant certification to water well contractors, monitoring well contractors, ~~and~~ water well pump and pitless unit installers, and geothermal system drillers 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 11. AMENDMENT.** Section 43-35-22 of the North Dakota Century Code is amended and reenacted as follows:

**43-35-22. Contracting without certification - Penalty.** Any person contracting to drill a water well or monitoring well or ~~install, drill~~ a pump or pitless unit, or drill a geothermal system for another without being certified in accordance with this chapter, or otherwise violating this chapter, is guilty of an infraction.

Approved March 2, 2007

Filed March 2, 2007



**CHAPTER 383****HOUSE BILL NO. 1053**

(Human Services Committee)

(At the request of the Board of Addiction Counseling Examiners)

**ADDICTION COUNSELOR LICENSURE**

AN ACT to amend and reenact subsections 3, 4, and 5 of section 43-45-01, sections 43-45-02, 43-45-03, and 43-45-04, subsection 1 of section 43-45-05, sections 43-45-05.1, 43-45-05.3, 43-45-06, and 43-45-07, and subsection 1 of section 43-45-07.3 of the North Dakota Century Code, relating to the licensure of addiction counselors; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsections 3, 4, and 5 of section 43-45-01 of the North Dakota Century Code are amended and reenacted as follows:

3. "~~Practicum~~ Clinical training" means a ~~minimum of nine months clinical training including inpatient or outpatient treatment work in addiction counseling, approved by the board.~~
4. "~~Private practice of addiction counseling~~ Internship" means the ~~independent practice of addiction counseling by a qualified individual who is self-employed on a full-time or part-time basis and is responsible for that independent practice. Consultation services provided to an organization or agency are not the private practice of addiction counseling work experience in a licensed addiction treatment facility under the supervision of a clinical supervisor registered by the board.~~
5. "~~Work experience or internship~~ Private practice of addiction counseling" means a ~~professional addiction treatment experience under the supervision of a clinical supervisor in a licensed addiction treatment facility or under the authority of a licensed addiction facility the independent practice of addiction counseling by a qualified individual who is self-employed on a full-time or part-time basis and is responsible for that independent practice. Consultation services provided to an organization or agency are not the private practice of addiction counseling.~~

**SECTION 2. AMENDMENT.** Section 43-45-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-45-02. Board of addiction counseling examiners - Composition.** The governor shall appoint a ~~nine-member~~ seven-member board of addiction counseling examiners. The members shall include:

1. ~~Six~~ Five members who are licensed addiction counselors actively engaged in the practice of addiction counseling, one of whom must be actively engaged in the private practice of addiction counseling.
2. Two members who are laypersons.

3. ~~One member who is a licensed addiction counselor in private practice.~~

**SECTION 3. AMENDMENT.** Section 43-45-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-45-03. Board member terms.** ~~The governor, prior to September 1, 1993, shall appoint one new board member for a term of one year, and one new board member for a term of two years members. Appointments made thereafter must be for three-year terms, but no person may be appointed to serve for more than two consecutive terms. Terms begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the newly appointed members who shall serve through the last calendar day of the year in which they are appointed, before commencing the terms prescribed by this section.~~

**SECTION 4. AMENDMENT.** Section 43-45-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-45-04. Board power, duties, and authority.** ~~The board shall administer and enforce the provisions of this chapter, evaluate the qualifications of applicants, and issue licenses under this chapter. The board shall also approve addiction counselor training programs and internship sites. The board may:~~

1. ~~Adopt rules under chapter 28-32, relating to licensure of addiction counselors, the establishment of ethical standards of practice for persons holding a license to practice addiction counseling in this state, the establishment of continuing education requirements, the requirements for approved addiction counselor training programs, internship sites, the requirements for clinical supervisors, the requirements for individuals in the private practice of addiction counseling, and requirements for trainee or internship approval. The board shall:~~
  - a. Administer and enforce the provisions of this chapter.
  - b. Evaluate the qualifications of applicants for a license to practice addiction counseling and issue licenses under this chapter.
  - c. Establish ethical standards of practice for persons holding a license to practice addiction counseling in this state.
  - d. Establish continuing education requirements and approve providers of continuing education.
  - e. Approve clinical training programs.
  - f. Register clinical trainees.
  - g. Register interns.
  - h. Register clinical supervisors.
  - i. Register licensees for private practice.
  - j. Approve and administer examinations.

2. ~~Issue subpoenas, examine witnesses, and administer oaths, and may investigate allegations of practices violating the provisions of this chapter. The board may:~~
  - a. Adopt rules under chapter 28-32 to implement this chapter.
  - b. Issue subpoenas, examine witnesses, and administer oaths, and may investigate allegations of practices violating the provisions of this chapter.
  - c. Recommend prosecution for violations of this chapter to the appropriate state's attorney.
  - d. Recommend that the attorney general bring civil actions to seek injunctive and other relief against violations of this chapter.
  - e. Collect fees for examinations, initial licensures, renewal of licenses, late renewals, private practice registrations, renewal of private practice registrations, approval of continuing education providers, and administrative fees. The fees must be established by rule in amounts necessary to compensate the board for administration and enforcement of this chapter.
  - f. Employ persons to assist the board in carrying out its duties under this chapter.
3. ~~Recommend prosecution for violations of this chapter to the appropriate state's attorney.~~
4. ~~Recommend that the attorney general bring civil actions to seek injunctive and other relief against violations of this chapter.~~
5. ~~Approve and administer examinations for licensing addiction counselors.~~
6. ~~Collect a fee set by the board on the filing of each application for a license to practice addiction counseling.~~
7. ~~Appoint or employ persons to assist the board in carrying out its duties under this chapter.~~

**SECTION 5. AMENDMENT.** Subsection 1 of section 43-45-05 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall meet ~~on~~ at least a quarterly ~~basis~~. A majority of the members constitute a quorum.

**SECTION 6. AMENDMENT.** Section 43-45-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-45-05.1. Licenses Initial licenses.**

1. The board shall issue an initial ~~one-year~~ license as an addiction counselor to an applicant who has met all of the following requirements:

- a. Has successfully completed coursework, approved by the board, at an accredited college or university;
  - b. Has successfully completed one or more oral or written examinations approved by the board for this purpose;
  - c. Has successfully completed ~~an addiction counselor~~ a clinical training program approved by the board; a practicum; and a work or accumulated experience or internship; and as established by the board by rule.
  - d. Has satisfied the board that the applicant agrees to adhere to the code of professional conduct adopted by the board.
2. The board may grant reciprocity, on such terms and conditions as it may determine necessary, to an applicant for licensure who is in good standing as a licensed, approved, or certified addiction counselor under the laws of another ~~state, territory of the United States, or province of Canada, or certifying body~~ jurisdiction that imposes at least substantially the same requirements that are imposed under this chapter.
  3. An applicant who is denied licensure must be notified in writing of the reasons for denial and of the right to a hearing before the board, under chapter 28-32, if a hearing is requested within thirty days.

**SECTION 7. AMENDMENT.** Section 43-45-05.3 of the North Dakota Century Code is amended and reenacted as follows:

**43-45-05.3. Private practice of addiction counseling.** A person may not engage in the private practice of addiction counseling unless that person:

- ~~1. Is licensed under this chapter as a licensed addiction counselor.~~
- ~~2. Is registered with the board as eligible for private practice under criteria established by board rule.~~
- ~~3. Has a board approved system established for peer review.~~
4. Upon application prior to January 1, 1994, the board shall register as eligible for private practice of addiction counseling any licensed addiction counselor who at that time is engaged in the private practice of addiction counseling is registered with the board as eligible for private practice under criteria established by board rule.

**SECTION 8. AMENDMENT.** Section 43-45-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-45-06. Addiction counseling practice - Exemptions.**

1. Nothing in this chapter may be construed to prevent any person from doing work within the standards and ethics of that person's profession and calling, provided that the person does not represent to the public, by title or by use of the initials L.A.C., that the person is engaging in addiction counseling.

2. ~~Nothing in this chapter may be construed to prevent students who are enrolled in programs of study leading to addiction counseling degrees from training with a board-approved clinical supervisor.~~
3. ~~Nothing in this chapter may be construed to prevent addiction counseling trainees or interns in board-approved programs approved by the board from engaging in activities required by the approved program without obtaining a license to practice addiction counseling related to training.~~

**SECTION 9. AMENDMENT.** Section 43-45-07 of the North Dakota Century Code is amended and reenacted as follows:

**43-45-07. Renewal of license.**

1. ~~The board shall annually renew the initial license of a person licensed under this chapter upon application and showing that:~~
  - a. ~~The holder of the license is in compliance with the provisions of this chapter and the rules adopted under this chapter.~~
  - b. ~~The holder of the license has successfully completed the continuing education requirements set by the board.~~
  - c. ~~The holder of a license has made payment of the renewal fees as set by the board.~~
  - d. ~~The license is not currently revoked or suspended.~~
2. ~~If the application for renewal does not meet the above conditions within six months of the expiration date of the license, the board may revoke the license. All licenses are effective when granted by the board.~~
2. All licenses of licensed addiction counselors expire on December thirty-first of every odd-numbered year.
3. A license may be renewed by payment of the renewal fee and completion of the continuing education requirements set by the board, provided the applicant's license is not currently revoked or grounds for denial under section 43-45-07.1 do not exist.
4. At the time of renewal the board shall require each applicant to present satisfactory evidence that the applicant has completed the continuing education requirements specified by the board.
5. If the completed application for renewal is not received by December first of the odd-numbered year, a late fee will be charged.
6. If the completed application for renewal is not received on or before the expiration date, the license expires and the person may not practice addiction counseling. The license may be renewed within thirty days from the date of expiration of the license if the completed application for renewal and the late fee are received within thirty days from the date of expiration of the license.

7. If a completed application for renewal of license is not received within thirty days from the date of expiration of the license, the licensee must reapply for licensure.
8. The board may extend the renewal deadline for an applicant having proof of medical or other hardship rendering the applicant unable to meet the renewal deadline.

**SECTION 10. AMENDMENT.** Subsection 1 of section 43-45-07.3 of the North Dakota Century Code is amended and reenacted as follows:

1. A person ~~aggrieved by the actions of a counselor licensed under this chapter~~ may file a written complaint with the board citing the specific allegations of ~~misconduct~~ unprofessional conduct by ~~the~~ an addiction counselor. The board shall notify the addiction counselor of the complaint and request a written response from the addiction counselor.

**SECTION 11. EFFECTIVE DATE.** Section 2 of this Act becomes effective on January 1, 2008.

Approved March 5, 2007  
Filed March 6, 2007

**CHAPTER 384****SENATE BILL NO. 2036**

(Legislative Council)  
(Industry, Business, and Labor Committee)

**PROFESSIONAL EMPLOYER ORGANIZATION  
LICENSING**

AN ACT to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to the licensing of professional employer organizations; to provide a penalty; and to provide an effective date.

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

**SECTION 1.** A new chapter to title 43 of the North Dakota Century Code is created and enacted as follows:

**Definitions.** As used in this chapter:

1. "Administrative fee" means the fee charged to a client by a professional employer organization for professional employer services. The term does not include any amount of a fee which is for wages and salaries, benefits, workers' compensation coverage, payroll taxes, withholding, or other assessment paid by the professional employer organization to or on behalf of a covered employee under a professional employer agreement.
2. "Client" means any person that enters a professional employer agreement with a professional employer organization.
3. "Coemployer" means either a professional employer organization or a client.
4. "Coemployment relationship" means a relationship that is intended to be an ongoing relationship rather than a temporary or project-specific relationship, wherein the rights, duties, and obligations of an employer which arise out of an employment relationship have been allocated between coemployers under a professional employer agreement and this chapter.
5. "Covered employee" means an individual having a coemployment relationship with a professional employer organization and a client, who has received written notice of coemployment with the professional employer organization, and whose coemployment relationship is under a professional employer agreement subject to this chapter. An individual who is an officer, director, shareholder, partner, or manager of the client is a "covered employee" to the extent the professional employer organization and the client have expressly agreed in the professional employer agreement that the individual is a covered employee and if the individual meets the criteria of this subsection and acts as an operational manager or performs day-to-day operational services for the client.

6. "Licensee" means a professional employer organization licensed under this chapter.
7. "Professional employer agreement" means a written contract between a client and a professional employer organization which provides for the coemployment of a covered employee, for the allocation of employer rights and obligations between the client and the professional employer organization with respect to a covered employee, and the assumption of the responsibilities required by this chapter.
8. "Professional employer organization" means a person engaged in the business of providing professional employer services. The term does not include an arrangement through which a person that does not have as its principal business activity the practice of entering a professional employer arrangement and does not hold itself out as a professional employer organization and that shares an employee with a commonly owned company within the meaning of section 414(b) and (c) of the Internal Revenue Code of 1986; an independent contractor arrangement through which a person assumes responsibility for a product produced or a service performed by the person or the person's agents and retains and exercises primary direction and control over the work performed by an individual whose services are supplied under the arrangement; or the provision of temporary help services.
9. "Professional employer services" means the entering of a coemployment relationship under this chapter.
10. "Temporary help services" means services consisting of a person recruiting and hiring its own employees; finding another organization that needs the services of those employees; assigning those employees to perform work at or services for the other organization to support or supplement the other organization's workforce, to provide assistance in special work situations, such as an employee absence, skill shortage, or seasonal workload or to perform a special assignment or project; and customarily attempting to reassign the employees to another organization when the employers finish each assignment.

**Rights, duties, and obligations unaffected.**

1. Neither this chapter nor a professional employer agreement may affect, modify, or amend a collective bargaining agreement or any right or obligation of a client, professional employer organization, or covered employee under federal law.
2. Neither this chapter nor a professional employer agreement may:
  - a. Diminish, abolish, or remove any right of a covered employee to a client or obligation of the client to a covered employee existing before the effective date of the professional employer agreement.
  - b. Affect, modify, or amend any contractual relationship or restrictive covenant between a covered employee and a client in effect at the time a professional employer agreement becomes effective or prohibit or amend a contractual relationship or restrictive covenant that is entered subsequently between a client and a covered employee.



3. A covered employee who is required under law to be licensed, registered, or certified is deemed solely an employee of the client for purposes of the license, registration, or certification requirement.
4. Unless otherwise provided by this chapter, a professional employer organization is not deemed to engage in any occupation, trade, profession, or other activity that is subject to licensing, registration, or certification requirements or is otherwise regulated solely by entering and maintaining a coemployment relationship with a covered employee who is subject to the requirement.
5. A client has the sole right of direction and control of the professional or licensed activities of a covered employee and of the client's business. The covered employee and client remain subject to regulation by the entity responsible for licensing, registration, or certification of the covered employee or client.
6. For purposes of determination of a tax credit or other economic incentive based on employment, a covered employee is deemed an employee solely of the client. A client is entitled to the benefit of any tax credit, economic incentive, or other benefit arising as the result of the employment of a covered employee of the client. If the grant or amount of the incentive is based on the number of employees, each client must be treated as employing only those covered employees coemployed by the client. A covered employee working for another client of the professional employer organization may not be counted. Each professional employer organization shall provide, upon request by a client or an agency or department of the state, employment information reasonably required for administration of the tax credit or economic incentive and which is necessary to support any request, claim, application, or other action by a client seeking the tax credit or economic incentive.
7. With respect to a bid, contract, purchase order, or agreement entered with the state or a political subdivision, a client company's status or certification by any agency of this state as a small, minority-owned, disadvantaged, or woman-owned business enterprise or as a historically underutilized business is not affected because the client company has entered an agreement with a professional employer organization or uses the services of a professional employer organization.

#### **Licensing requirements.**

1. After the effective date of this Act, a person may not provide, advertise, or otherwise hold itself out as providing professional employer services, unless the person is licensed under this chapter. A person engaged in the business of providing professional employer services shall obtain a license regardless of its use of the term or conducting business as a "professional employer organization", "staff leasing company", "registered staff leasing company", "employee leasing company", "administrative employer", or any other name.
2. Each applicant for licensure shall provide the secretary of state with the following information:

- a. The name of the professional employer organization and any name under which the professional employer organization intends to conduct business in this state.
  - b. The designation of organization of the applicant whether domestic or foreign; a corporation, limited liability company, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, sole proprietor, or any other person subject to a governing statute; and the jurisdiction of origin of the organization.
  - c. The address of the principal place of business of the professional employer organization and the address of each office it maintains in this state.
  - d. The professional employer organization's taxpayer or employer identification number.
  - e. The date of the end of the applicant's fiscal year.
  - f. A list by jurisdiction of each name under which the professional employer organization has operated in the preceding five years, including any alternative names, names of predecessors, and, if known, successor business entities.
  - g. A statement of ownership, which must include the name and address of any person that owns or controls twenty-five percent or more of the equity interests of the professional employer organization.
  - h. A statement of management, which must include the name and address of any individual who serves as president, chief executive officer, or otherwise has the authority to act as a senior executive officer of the professional employer organization.
  - i. A financial statement, verified by a certified public accountant licensed to practice in the jurisdiction in which the accountant is located, as of a date not earlier than one hundred eighty days before the date submitted to the secretary of state, which is prepared in accordance with generally accepted accounting principles. The financial statement must set forth the financial condition of the professional employer organization over the most recent twelve-month operating period and must clearly define the working capital of the professional employer organization. A professional employer organization that has not had sufficient operating history to have a financial statement based upon at least twelve months of operating history shall meet the financial capacity requirements under this chapter and present a financial statement as provided under this subdivision for the entire period of its operation.
3. A license issued under this section is valid for one year.
  4. a. Within sixty days before the expiration of a license, the licensee may apply to renew the license by submitting to the secretary of

state the information required in subsection 2 along with the required license fee.

- b. For the purposes of a renewal application, the audited and verified financial statement may be based on the twelve months of operating history before the close of the fiscal year immediately preceding the renewal date of the license. A professional employer organization that is unable to obtain an audited and verified financial statement before the expiration of a license may submit with the application for renewal:
- (1) A written request for an extension to submit the audited and verified financial statement by a specific date within six months after the license is renewed and a verified statement, signed by an individual authorized by the professional employer organization, affirming that the professional employer organization has continuously maintained sufficient working capital to meet the financial capacity requirements under this chapter; or
  - (2) A bond with a minimum value of one hundred thousand dollars to be held by the secretary of state to secure payment by the professional employer organization of any tax, wage, benefit, or other entitlement due to or with respect to a covered employee if the professional employer organization does not make the payment when due.
- c. The secretary of state shall suspend the license of a professional employer organization if the professional employer organization fails to submit the audited and verified financial statement by the extended date provided under subdivision b.
5. A person applying for licensure or a renewal of licensure shall maintain continuously its organization's applicable records current and in good standing as otherwise required by law.
6. The secretary of state shall maintain a list of professional employer organizations licensed under this chapter.

**Fees.**

1. Upon filing of an application for a license, a professional employer organization shall pay a fee of one thousand dollars.
2. Upon filing of an application for renewal of a license, a professional employer organization shall pay a fee of five hundred dollars.
3. Any fees collected under this chapter must be deposited in the secretary of state's operating fund.

**Financial capability.** A professional employer organization shall maintain either:

1. A minimum working capital of one hundred thousand dollars as reflected in the financial statement submitted to the secretary of state with the license application and each annual renewal; or

2. A bond with a minimum value of one hundred thousand dollars as reflected in the financial statement submitted to the secretary of state. The bond must be held by the secretary of state and secure payment by the professional employer organization of any tax, wage, benefit, or other entitlement due to or with respect to a covered employee if the professional employer organization does not make the payment when due. A bond provided under this section may not be included for the purpose of calculation of the minimum net worth required by this section.

**General requirements.**

1. Except as specifically provided in this chapter or in a professional employer agreement, in each coemployment relationship:
  - a. The client is entitled to exercise all rights and is obligated to perform all duties and responsibilities otherwise applicable to an employer in an employment relationship.
  - b. The professional employer organization is entitled to exercise only those rights and obligated to perform only those duties and responsibilities specifically required by this chapter or set forth in the professional employer agreement. The rights, duties, and obligations of the professional employer organization as coemployer with respect to any covered employee are limited to those arising under the professional employer agreement and this chapter during the term of coemployment by the professional employer organization of the covered employee.
  - c. The client retains the exclusive right to direct and control any covered employee as is necessary to conduct the client's business, to discharge any of the client's fiduciary responsibilities, or to comply with any licensure requirements applicable to the client or to a covered employee.
2. Except as specifically provided in this chapter, a coemployment relationship between the client and the professional employer organization, and between each coemployer and each covered employee, must be governed by the professional employer agreement. Each professional employer agreement must include:
  - a. The allocation of rights, duties, and obligations.
  - b. (1) A statement that provides that:
    - (a) The professional employer organization shall pay wages to any covered employee and shall withhold, collect, report, and remit payroll-related and unemployment taxes on wages paid to the covered employee by the professional employer organization;
    - (b) The client shall accurately report all wages of a covered employee to the professional employer organization; and

- (c) The professional employer organization shall make payments for employee benefits for covered employees to the extent the professional employer organization has assumed responsibility in the professional employer agreement.
- (2) As used in this subdivision, the term "wages" means all remuneration for services to the professional employer organization and the client, regardless of source, including a commission or bonus and the cash value of any remuneration in a medium other than cash. Any gratuity customarily received by an individual in the course of the individual's service from any source other than the client or the professional employer organization must be treated as wages received from the individual's coemployers.
- c. A statement providing that the professional employer organization has the right to hire, discipline, and terminate a covered employee as may be necessary to fulfill the professional employer organization's responsibilities under this chapter and the professional employer agreement and that the client has the right to hire, discipline, and terminate a covered employee.
- d. A statement addressing the responsibility to obtain workers' compensation coverage.
3. Under each professional employer agreement entered by a professional employer organization, the professional employer organization shall provide written notice to each covered employee affected by the agreement of the general nature of the coemployment relationship.
4. Except to the extent otherwise expressly provided by a professional employer agreement:
- a. A client is solely responsible for the quality, adequacy, or safety of the goods or services produced or sold in the client's business.
- b. A client is solely responsible for directing, supervising, training, and controlling the work of a covered employee with respect to the business activities of the client and solely responsible for any act, error, or omission of a covered employee relating to those activities.
- c. A client is not liable for any act, error, or omission of a professional employer organization or of any covered employee of the client and a professional employer organization if the covered employee is acting under the express direction and control of the professional employer organization.
- d. A professional employer organization is not liable for any act, error, or omission of a client or of any covered employee of the client if the covered employee is acting under the express direction and control of the client.

- e. This subsection does not limit any contractual liability or obligation specifically provided in the written professional employer agreement.
  - f. A covered employee is not, solely as the result of being a covered employee of a professional employer organization, an employee of the professional employer organization for purposes of general liability insurance, fidelity bond, surety bond, employer's liability not covered by workers' compensation, or liquor liability insurance carried by the professional employer organization unless the covered employee is included by specific reference in the professional employer agreement and applicable prearranged employment contract, insurance contract, or bond.
5. A professional employer organization is not engaged in the sale of insurance or in acting as a third-party administrator by offering, marketing, selling, administering, or providing professional employer services which include services and employee benefit plans for a covered employee.
6. Nothing in this chapter or in a professional employer agreement may be construed to affect the provisions of section 52-04-24 or 65-01-08.

#### **Benefit plans.**

1. Both a client and a professional employer organization are deemed to be an employer for purposes of sponsoring retirement and welfare benefit plans for a covered employee.
2. A fully insured welfare benefit plan offered to the covered employees of a professional employer organization is considered a single employer welfare benefit plan and may not be considered a multiple employer welfare arrangement.
3. For purposes of chapter 26.1-36.3, a professional employer organization is considered the employer of all of its covered employees, and all covered employees of any client participating in a health benefit plan sponsored by a single professional employer organization are considered employees of the professional employer organization.
4. If a professional employer organization offers to its covered employees any health benefit plan that is not fully insured by an authorized insurer, the plan must:
- a. Utilize an authorized third-party administrator;
  - b. Hold all plan assets, including participant contributions, in a trust account;
  - c. Provide sound reserves for the plan as determined using generally accepted actuarial standards; and
  - d. Provide written notice to each covered employee participating in the benefit plan that the plan is self-insured or is not fully insured.

**Disciplinary actions - Complaints - Adjudicative proceedings - Penalties - Appeals.**

1. The secretary of state may:
  - a. Deny an application for a professional employer organization license;
  - b. Suspend a professional employer organization license for a period of not more than sixty months;
  - c. Request the attorney general to bring an action in district court to recover restitution or penalties imposed under this chapter; or
  - d. Not renew or issue a new professional employer organization license until a professional employer organization has paid any civil penalty or restitution imposed under this chapter.
2. Any person acting in the capacity of a professional employer organization without a license is guilty of a class A misdemeanor. In addition to the license fee due if the person subsequently applies for a license, the person may be assessed a civil penalty by the secretary of state, following written notice to the person of an intent to assess the penalty, in an amount not to exceed three times the amount of the license fee.
3. An individual may file a duly verified complaint with the secretary of state charging that the professional employer organization is guilty of any of the following:
  - a. The conviction of the professional employer organization or a controlling person of the professional employer organization of a crime that relates to the operation of the professional employer organization or which relates to fraud or deceit or the ability of the professional employer organization or the controlling person of the professional employer organization to operate the professional employer organization;
  - b. An individual knowingly making a material misrepresentation or providing false or fraudulent information to the secretary of state or other governmental agency; or
  - c. A willful violation of this chapter.
4. A complaint must be on a form approved by the secretary of state and must set forth sufficient facts upon which a reasonable individual could conclude that any of the acts or omissions in subsection 3 has been committed.
5. The secretary of state shall review a complaint filed under this section. If the secretary of state determines a complaint provides sufficient facts upon which a reasonable individual could conclude that one or more of the acts or omissions set forth in subsection 3 has been committed, the secretary of state may initiate an adjudicative proceeding under chapter 28-32. If, after an adjudicative proceeding or as part of an informal disposition under chapter 28-32, the secretary of state determines that

the professional employer organization is guilty of an act or omission charged or if the licensee admits guilt to an act or omission charged, the secretary of state may:

- a. Suspend or revoke the professional employer organization license;
  - b. Order an administrative penalty of not more than one thousand dollars for each material violation;
  - c. Order restitution in an amount not exceeding five thousand dollars;
  - d. Issue a cease and desist order; or
  - e. Impose a lesser sanction or remedy.
6. Any act or omission under subsection 3 may also constitute grounds for the attorney general to bring an action under chapter 51-15 and may subject the professional employer organization to all provisions, procedures, remedies, and penalties provided for in chapter 51-15.
7. A professional employer organization aggrieved by a decision of the secretary of state in denying, revoking, or suspending the professional employer organization license or ordering restitution or penalties may appeal the decision to the district court of Burleigh County.
8. A professional employer organization may not obtain a license under any name after the denial of an application for a license or during the period of a revocation or suspension. For the purposes of this subsection, a professional employer organization that has had an application for a license denied or which has had a license revoked or suspended includes any officer, director, agent, member, or employee of the professional employer organization.

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective on October 1, 2007.

Approved April 13, 2007  
Filed April 16, 2007



# OFFICES AND OFFICERS

## CHAPTER 385

### HOUSE BILL NO. 1099

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

## TRADE SECRET CONFIDENTIALITY

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

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

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

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

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

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

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

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

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

Approved March 21, 2007

Filed March 21, 2007

**CHAPTER 386****HOUSE BILL NO. 1134**

(Education Committee)

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

**EDUCATION AND TRAINING SYSTEM FOLLOWUP  
INFORMATION**

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

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

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

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

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

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

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

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

Approved April 10, 2007  
Filed April 11, 2007

**CHAPTER 387****SENATE BILL NO. 2160**

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

**HIGHER EDUCATION NONPROFIT ORGANIZATION  
RECORDS**

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

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

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

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

Approved May 2, 2007  
Filed May 3, 2007

**CHAPTER 388****SENATE BILL NO. 2265**

(Senator Andrist)

(Representative Froseth)

**OPEN RECORDS EXEMPTIONS**

AN ACT to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to records of victims of domestic violence; and to amend and reenact subsection 4 of section 28-32-08, subsection 2 of section 28-32-10, subsection 5 of section 28-32-19, section 28-32-33, subsections 2, 6, and 8 of section 44-04-18, subsections 1 and 6 of section 44-04-18.7, subsection 4 of section 44-04-18.10, section 44-04-18.13, subsection 2 of section 44-04-28, and section 57-40.6-07 of the North Dakota Century Code, relating to fees and discovery in adjudicative proceedings, fees for copies, providing copies of records, personal records in criminal files, release of confidential records, lists of minors, release of social security numbers, and release of 911 records.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 28-32-08 of the North Dakota Century Code is amended and reenacted as follows:

4. The agency shall mail or deliver a copy of the regulatory analysis to any person who requests a copy of the regulatory analysis. The agency may charge ~~for the actual cost of providing copies~~ a fee for a copy of the regulatory analysis as allowed under section 44-04-18.

**SECTION 2. AMENDMENT.** Subsection 2 of section 28-32-10 of the North Dakota Century Code is amended and reenacted as follows:

2. The agency shall mail or deliver a copy of the agency's full notice to each member of the legislative assembly whose name appeared as a sponsor or cosponsor of legislation enacted during the most recent session of the legislative assembly which is being implemented by the proposed rule and to each person who has made a timely request to the agency for a copy of the notice. The agency may mail or otherwise provide a copy of the agency's full notice to any person who is likely to be an interested person. The agency shall mail or deliver a copy of the rules to each member of the legislative assembly whose name appeared as a sponsor or cosponsor of legislation enacted during the most recent session of the legislative assembly which is being implemented by the proposed rule and to any person requesting a copy. The agency may charge persons who are not members of the legislative assembly ~~fees for the actual cost of providing~~ copies of the proposed rule as allowed under section 44-04-18.

**SECTION 3. AMENDMENT.** Subsection 5 of section 28-32-19 of the North Dakota Century Code is amended and reenacted as follows:

5. The code must be arranged, indexed, and printed or duplicated in a manner to permit separate publication of portions thereof relating to



individual agencies. An agency may print as many copies of such separate portions of the code as it may require. If the office of the legislative council does not publish the code supplement due to technological problems or lack of funds, the agency whose rules would have been published in the code supplement shall provide a copy of the rules to any person upon request. The agency may charge ~~for the actual cost of providing copies~~ a fee for a copy of the rules as allowed under section 44-04-18.

**SECTION 4. AMENDMENT.** Section 28-32-33 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-33. Adjudicative proceedings - Subpoenas - Discovery - Protective orders.**

1. In an adjudicative proceeding, discovery may be obtained in accordance with the North Dakota Rules of Civil Procedure.
2. ~~In an adjudicative proceeding, a party must first show good cause, by written petition, and get the written approval of the hearing officer before obtaining discovery from an administrative agency.~~
3. In any adjudicative proceeding, upon the request or motion of any party to the proceeding or upon the hearing officer's own motion on behalf of the agency, a hearing officer may issue subpoenas, discovery orders, and protective orders in accordance with the North Dakota Rules of Civil Procedure. A motion to quash or modify, or any other motion relating to subpoenas, discovery, or protective orders must be made to the hearing officer. The hearing officer's rulings on these motions may be appealed under section 28-32-42 after issuance of the final order by the agency. The cost of issuing and serving a subpoena in any adjudicative proceeding must be paid by the person or agency requesting it.
4. 3. Any witness who is subpoenaed under the provisions of this section and who appears at a hearing or other part of an adjudicative proceeding, or whose deposition is taken, shall receive the same fees and mileage as a witness in a civil case in the district court. Witness fees and mileage shall be paid by the party or agency at whose instance the witness appears. Any hearing officer may order the payment of witness fees or mileage by the appropriate party or agency.
5. 4. Subpoenas, discovery orders, protective orders, and other orders issued under this section may be enforced by applying to any judge of the district court for an order requiring the attendance of a witness, the production of all documents and objects described in the subpoena, or otherwise enforcing an order. Failure of a witness or other person to comply with the order of the district court is contempt of court which is punishable by the district court, upon application. The judge may award attorney's fees to the prevailing party in an application under this subsection.

**SECTION 5.** A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

**Domestic violence record information of law enforcement exempt.** The address, telephone number, or any identifying information that, if released, could

reasonably be used to locate a victim or alleged victim of domestic violence contained in any record maintained by a law enforcement facility is exempt from section 44-04-18 and may be redacted from the record before it is released.

**SECTION 6. AMENDMENT.** Subsections 2, 6, and 8 of section 44-04-18 of the North Dakota Century Code are amended and reenacted as follows:

2. Upon request for a copy of specific public records, any entity subject to subsection 1 shall furnish the requester one copy of the public records requested. A request need not be made in person or in writing, and the copy must be mailed upon request. A public entity may charge up to twenty-five cents per impression of a paper copy. As used in this section, "paper copy" means a one-sided or two-sided duplicated copy of a size not more than eight and one-half by fourteen inches [19.05 to 35.56 centimeters]. For any copy of a record that is not a paper copy as defined in this section, the public entity may charge a reasonable fee for making the copy. As used in this section, "reasonable fee" means the actual cost to the public entity of making the copy, including labor, materials, and equipment. The entity may charge for the actual cost of postage to mail a copy of a record. An entity may require payment before locating, redacting, making, or mailing the copy, ~~or both~~. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for locating records if locating the records requires more than one hour. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for excising confidential or closed material under section 44-04-18.10. If the entity is not authorized to use the fees to cover the cost of providing or mailing the copy, or both, or if a copy machine is not readily available, the entity may make arrangements for the copy to be provided or mailed, or both, by another entity, public or private, and the requester shall pay the fee to that other entity. This subsection does not apply to copies of public records for which a different fee is specifically provided by law.
6. Any request under this section for records in the possession of a public entity by a party to a criminal or civil action or ~~adversarial administrative~~ adjudicative proceeding as defined in subsection 1 of section 28-32-01 in which the public entity is a party, or by an agent of the party, must comply with applicable discovery rules and be made to the attorney representing that entity in the criminal or civil action or ~~adversarial administrative~~ adjudicative proceeding. The public entity may deny a request from a party or an agent of a party under this subsection if the request seeks records that are privileged under applicable discovery rules.
8. This section is violated when a person's right to review or receive a copy of a record that is not exempt or confidential is denied or unreasonably delayed or when a fee is charged in excess of the amount authorized in ~~subsection~~ subsections 2 and 3.

**SECTION 7. AMENDMENT.** Subsections 1 and 6 of section 44-04-18.7 of the North Dakota Century Code are amended and reenacted as follows:

1. Active criminal intelligence information and active criminal investigative information are not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. A criminal justice agency

shall maintain a list of all files containing active criminal intelligence and investigative information which have been in existence for more than one year. With respect to each file, the list must contain the file's number or other identifying characteristic and the date the file was established. The list required under this subsection is subject to section 44-04-18. ~~Criminal intelligence and investigative information that is not considered "active" is not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota to the extent that the information is personal information.~~ Personal information of any person contained in an active or nonactive file is an exempt record as defined in subsection 5 of section 44-04-17.1.

6. "Personal information" means a person's medical ~~information~~ records; motor vehicle operator's identification number; social security number; ~~and any credit, debit, or electronic fund transfer card number; and any financial account numbers.~~

**SECTION 8. AMENDMENT.** Subsection 4 of section 44-04-18.10 of the North Dakota Century Code is amended and reenacted as follows:

4. Unless otherwise prohibited by federal law, records of a public entity which are otherwise closed or confidential may be disclosed to any public entity or federal agency for the purpose of law enforcement or collection of debts owed to a public entity, provided that the records are not used for other purposes and the closed or confidential nature of the records is otherwise maintained. For the purpose of this subsection, "public entity" is limited to those entities defined in subdivision a or b of subsection 12 of section 44-04-17.1.

**SECTION 9. AMENDMENT.** Section 44-04-18.13 of the North Dakota Century Code is amended and reenacted as follows:

**44-04-18.13. Lists of children minors.** Any record of a public entity that is a compilation of ~~children's~~ minor's names, addresses, phone numbers, or any combination thereof, is exempt.

**SECTION 10. AMENDMENT.** Subsection 2 of section 44-04-28 of the North Dakota Century Code is amended and reenacted as follows:

2. A social security number may be released:
  - a. For purposes of participation in retirement or other employment benefits programs; ~~or~~
  - b. As authorized by the individual to whom the social security number is assigned, that individual's lawful agent or guardian, or by order of a court; or
  - c. To another public entity or its agents, employees, or contractors if disclosure is necessary for the receiving entity to perform its duties and responsibilities. The receiving governmental entity and its agents, employees, and contractors shall maintain the confidential status of the numbers.

**SECTION 11. AMENDMENT.** Section 57-40.6-07 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.6-07. Use of the furnished information.** Unpublished names and telephone numbers generated by a 911 coordinator or 911 public safety answering point or provided to a 911 coordinator or public safety answering point under section 57-40.6-06 are confidential and may be used only for verifying the location or identity, or both, for response purposes, of a person calling a 911 answering point for emergency help or by the 911 coordinator or public safety answering point for the purpose of a public safety agency notifying a person of an emergency. Published names and telephone numbers maintained by a 911 coordinator or public safety answering point are exempt records as defined in section 44-04-17.1 but must be provided upon request to the treasurer and auditor of the county served by the 911 coordinator for the purpose of verifying and correcting names and addresses used for official purposes. A record obtained for the purpose of providing services in an emergency and which reveals the address of a person requesting emergency service or reporting an emergency by accessing an emergency telephone number 911 system is exempt from section 44-04-18 and may be redacted from the record before it is released.

Approved May 2, 2007  
Filed May 3, 2007

## CHAPTER 389

### SENATE BILL NO. 2196 (Senators Hacker, Klein, J. Lee) (Representatives Boe, Heller, Potter)

#### NOTARY DISCIPLINARY PROCEEDINGS AND ACTS

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

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

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

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

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

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

My commission expires \_\_\_\_\_.

Each jurat must be substantially in the following form:

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_\_:

(Notary Seal) \_\_\_\_\_

(signature of notary)

Notary Public

My commission expires \_\_\_\_\_

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

**44-06-13.1. Prohibited acts - Penalty.**

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

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

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

**44-06-13.2. Disciplinary proceedings.**

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

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

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

Approved April 4, 2007  
Filed April 5, 2007



**CHAPTER 390****SENATE BILL NO. 2246**

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

**LODGING EXPENSE REIMBURSEMENT**

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

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

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

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

Approved April 11, 2007  
Filed April 13, 2007

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

**CHAPTER 391****SENATE BILL NO. 2093**

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

**TRAVEL EXPENSE PAYMENT AND PURCHASING  
CARDS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**54-44.4-11. Small purchases.**

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

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

Approved May 1, 2007

Filed May 2, 2007

**CHAPTER 392****SENATE BILL NO. 2194**

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

**ELECTED OFFICIAL RECALL**

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

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

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

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

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

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

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

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

Approved April 9, 2007

Filed April 10, 2007

# PRINTING LAWS

## CHAPTER 393

### SENATE BILL NO. 2094

(Industry, Business and Labor Committee)  
(At the request of the Office of Management and Budget)

## PUBLIC PRINTING BID PREFERENCES

AN ACT to amend and reenact sections 46-02-15 and 46-02-20 of the North Dakota Century Code, relating to resident bidder preference for public printing and services provided by in-plant print shops.

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

**SECTION 1. AMENDMENT.** Section 46-02-15 of the North Dakota Century Code is amended and reenacted as follows:

**46-02-15. ~~Where public~~ Public printing shall be done resident bidder preference.** ~~Where~~ If practicable, all state, county, and other political subdivision public printing, binding, and blank book manufacturing, blanks, and other printed stationery, must be ~~done in this state~~ awarded to a resident North Dakota bidder as defined in section 44-08-02.

<sup>199</sup> **SECTION 2. AMENDMENT.** Section 46-02-20 of the North Dakota Century Code is amended and reenacted as follows:

**46-02-20. In-plant print shops.** Central duplicating services of the office of management and budget or by departments, institutions, state offices, and printing services under the jurisdiction of the board of higher education, with the exception of the state ~~school~~ college of science, the university of North Dakota, and the North Dakota state university of North Dakota Valley City, and Valley City state university, may not provide the following services: printing or duplicating of all coated stock; continuous forms; snap-out forms; envelopes over twenty thousand; process color, except for jobs generated on computer printers which do not exceed eleven inches [27.94 centimeters] by seventeen inches [43.18 centimeters] and five hundred total image pages; and print or duplicate paper larger than eleven inches [27.94 centimeters] by seventeen inches [43.18 centimeters], excluding work done on plotters.

Approved May 1, 2007

Filed May 2, 2007

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<sup>199</sup> Section 46-02-20 was also amended by section 1 of House Bill No. 1101, chapter 394.



**CHAPTER 394****HOUSE BILL NO. 1101**

(Education Committee)

(At the request of the Office of Management and Budget)

**IN-PLANT PRINT SHOP SERVICES**

AN ACT to amend and reenact section 46-02-20 of the North Dakota Century Code, relating to services provided by in-plant print shops.

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

<sup>200</sup> **SECTION 1. AMENDMENT.** Section 46-02-20 of the North Dakota Century Code is amended and reenacted as follows:

**46-02-20. In-plant print shops.** Central duplicating services of the office of management and budget or by departments, institutions, state offices, and printing services under the jurisdiction of the board of higher education, with the exception of the state ~~school~~ college of science, the university of North Dakota, and the North Dakota state university of North Dakota - Valley City, and Valley City state university, may not provide the following services: printing or duplicating of all coated stock, continuous forms, snap-out forms, envelopes over twenty thousand, ~~process color,~~ and print or duplicate paper larger than eleven inches [27.94 centimeters] by seventeen inches [43.18 centimeters], excluding work done on plotters.

Approved March 21, 2007

Filed March 21, 2007

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<sup>200</sup> Section 46-02-20 was also amended by section 2 of Senate Bill No. 2094, chapter 393.

# PROPERTY

## CHAPTER 395

### SENATE BILL NO. 2364

(Senators Dever, Tollefson)  
(Representatives Bellew, Karls, L. Meier)

## COVENANT AND CONDOMINIUM PROHIBITED PROVISIONS

AN ACT to create and enact a new section to chapter 47-04 and a new section to chapter 47-04.1 of the North Dakota Century Code, relating to prohibited provisions in restrictive covenants and condominium project bylaws and regulations.

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

**SECTION 1.** A new section to chapter 47-04 of the North Dakota Century Code is created and enacted as follows:

**Covenant may not prohibit display of political signs.** Notwithstanding any provision in a covenant, a covenant running with the land may not prohibit the outdoor display of a political yard sign by the owner or a resident on the owner's property within sixty days before any primary, general, or special election. A covenant may include reasonable rules regarding the placement and manner of display of political signs.

**SECTION 2.** A new section to chapter 47-04.1 of the North Dakota Century Code is created and enacted as follows:

**Covenant, declaration, bylaw, or other rule may not prohibit display of political signs.** Notwithstanding any provision in a covenant, declaration, bylaw, or other rule of a project, an owner or resident may not be prohibited from displaying a political yard sign on the owner's property within sixty days before any primary, general, or special election. A covenant, declaration, bylaw, or rule may include reasonable restrictions regarding the placement and manner of display of political signs.

Approved April 30, 2007  
Filed May 1, 2007

**CHAPTER 396****SENATE BILL NO. 2219**

(Senator Holmberg)

**CONDOMINIUM DESCRIPTIONS IN CONVEYANCES**

AN ACT to amend and reenact section 47-04.1-05 of the North Dakota Century Code, relating to descriptions of condominium units in conveyances.

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

**SECTION 1. AMENDMENT.** Section 47-04.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**47-04.1-05. Reference to declaration for description of unit and common elements.** All subsequent deeds, mortgages, or other instruments ~~shall describe the unit and the land, but~~ may describe the individual units, the common elements, ~~other than~~ the land, or limited common elements by reference to appropriate numbers or letters ~~if such as they~~ appear on the declaration provided for in section 47-04.1-03 without repeating in detail the description of ~~such the~~ units, common elements other than the land, or limited common elements. ~~Such~~ The reference ~~shall~~ must include the book and page of the recorded declaration.

Approved May 2, 2007

Filed May 3, 2007

**CHAPTER 397****HOUSE BILL NO. 1231**

(Representatives Kretschmar, Brandenburg)  
(Senator Erbele)

**WIND ENERGY PAYMENTS**

AN ACT to amend and reenact section 47-05-16 of the North Dakota Century Code, relating to wind energy payments.

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

**SECTION 1. AMENDMENT.** Section 47-05-16 of the North Dakota Century Code is amended and reenacted as follows:

**47-05-16. Severance of wind energy rights limited.** Except for a wind easement created under section 47-05-15 and as otherwise provided in this section, an interest in a resource located on a tract of land and associated with the production of energy for wind power on the tract of land may not be severed from the surface estate. However, nothing in this section may be construed to prohibit or limit the right of a seller of real estate to retain any payments associated with an existing wind energy project.

Approved March 23, 2007  
Filed March 23, 2007

**CHAPTER 398****HOUSE BILL NO. 1146**

(Representatives Hanson, Kroeber, Pollert, Porter, Solberg)  
(Senator Urlacher)

**HUNTING ACCESS RIGHT SEVERANCE PROHIBITED**

AN ACT to create and enact a new section to chapter 47-05 of the North Dakota Century Code, relating to severance of the right of access for hunting access from the surface estate; to provide for a legislative council study; and to provide an expiration date.

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

**SECTION 1.** A new section to chapter 47-05 of the North Dakota Century Code is created and enacted as follows:

**Severance of the right of access for hunting access prohibited.** The right of access to land to shoot, shoot at, pursue, take, attempt to take, or kill any game animals or game birds; search for or attempt to locate or flush any game animals and game birds; lure, call, or attempt to attract game animals or game birds; hide for the purpose of taking or attempting to take game animals or game birds; and walk, crawl, or advance toward wildlife while possessing implements or equipment useful in the taking of game animals or game birds may not be severed from the surface estate. This section does not apply to deeds, instruments, or interests in property recorded before the effective date of this Act.

**SECTION 2. LEGISLATIVE COUNCIL - SEVERANCE OF HUNTING ACCESS FROM SURFACE ESTATE STUDY.** The legislative council shall consider studying, during the 2007-08 interim, issues related to the severance of hunting access from the surface estate. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 3. EXPIRATION DATE.** This Act is effective through July 31, 2009, and after that date is ineffective.

Approved April 18, 2007  
Filed April 19, 2007

**CHAPTER 399****HOUSE BILL NO. 1147**  
(Representatives Porter, R. Kelsch)  
(Senator Cook)**RESIDENTIAL LEASE TERMINATION NOTICES**

AN ACT to amend and reenact sections 47-16-06 and 47-16-15 of the North Dakota Century Code, relating to the notice of termination of residential leases.

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

**SECTION 1. AMENDMENT.** Section 47-16-06 of the North Dakota Century Code is amended and reenacted as follows:

**47-16-06. When a lease is presumed renewed.** If a lessee of real property remains in possession ~~thereof~~ of the real property after the expiration of the ~~leasing~~ leasing lease and the lessor accepts rent from the lessee, the parties are presumed to have renewed the ~~leasing~~ leasing lease on the same terms and for the same time, not exceeding one year. Except in the case of a lease with an automatic renewal clause, if a lessee of real property for residential purposes remains in possession of the property after the expiration of the lease and the lessor accepts rent from the lessee, the parties are presumed to have renewed the lease as a month-to-month tenancy.

**SECTION 2. AMENDMENT.** Section 47-16-15 of the North Dakota Century Code is amended and reenacted as follows:

**47-16-15. Notice of termination of lease.**

1. A leasing lease 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 an intention to terminate the lease, at least as long before the expiration of the lease as the term of the leasing itself, not exceeding ~~thirty days~~ one calendar month.
2. 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 party may terminate the tenancy by giving at least ~~thirty days~~ one calendar month's written notice at any time. The rent is due and payable to and including the date of termination.
3. 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.
4. Any agreement that requires a lessee to give notice that exceeds one month from the end of a month to terminate a lease of real property for residential purposes must state the notice requirement and provide space for the lessee to initial next to the notice requirement. If the notice is not initialed by the lessee at the time of executing the lease, the lessee may terminate the lease on the last day of a month with at least one calendar month's notice.

5. If a lease converts to a month-to-month tenancy under section 47-16-06 or 47-16-06.1, either party may terminate the lease on the last day of a month with at least one calendar month's notice.

Approved April 12, 2007  
Filed April 13, 2007

**CHAPTER 400****HOUSE BILL NO. 1302**

(Representatives Hawken, Weiler)  
(Senator Hacker)

**RENTAL PROPERTY SECURITY DEPOSITS**

AN ACT to amend and reenact subsection 1 of section 47-16-07.1 of the North Dakota Century Code, relating to security deposits.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 47-16-07.1 of the North Dakota Century Code is amended and reenacted 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 a federally insured interest-bearing savings or checking account for the benefit of the tenant. The security deposit and any interest accruing on the deposit must be paid to the lessee upon termination of a lease, subject to the conditions of subsection 2. A lessor may not demand or receive security, however denominated, in an amount or value in excess of one month's rent, except if the lessee is housing a pet on the leased premises, the security may not exceed ~~one~~ the greater of two thousand five hundred dollars or an amount equivalent to two months' rent.

Approved March 6, 2007

Filed March 7, 2007



**CHAPTER 401****HOUSE BILL NO. 1257**

(Representative Skarphol)

**ROYALTY PAYMENTS**

AN ACT to amend and reenact section 47-16-39.1 of the North Dakota Century Code, relating to the payment of oil and gas royalties when title to the property producing the oil and gas is in dispute.

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

**SECTION 1. AMENDMENT.** Section 47-16-39.1 of the North Dakota Century Code is amended and reenacted as follows:

**47-16-39.1. Obligation to pay royalties - Breach.** The obligation arising under an oil and gas lease to pay oil or gas royalties to the mineral owner or the mineral owner's assignee, or to deliver oil or gas to a purchaser to the credit of the mineral owner or the mineral owner's assignee, or to pay the market value thereof is of the essence in the lease contract, and breach of the obligation may constitute grounds for the cancellation of the lease in cases where it is determined by the court that the equities of the case require cancellation. If the operator under an oil and gas lease fails to pay oil or gas royalties to the mineral owner or the mineral owner's assignee within one hundred fifty days after oil or gas produced under the lease is marketed and cancellation of the lease is not sought, the operator shall pay interest on the unpaid royalties shall thereafter bear interest calculated at the rate of eighteen percent per annum until paid, except that the commissioner of university and school lands may negotiate a rate to be no less than the prime rate as established by the Bank of North Dakota plus four percent per annum with a maximum of eighteen percent per annum, for unpaid royalties on minerals owned or managed by the board of university and school lands. Provided, that the operator may remit semiannually to a person entitled to royalties the aggregate of six months' monthly royalties where the aggregate amount is less than fifty dollars. The district court for the county in which the oil or gas well is located has jurisdiction over all proceedings brought pursuant to this section. The prevailing party in any proceeding brought pursuant to this section is entitled to recover any court costs and reasonable attorney's fees. This section does not apply when mineral owners or their assignees elect to take their proportionate share of production in kind; or in the event of a dispute of title existing that would affect distribution of royalty payments; however, the operator shall make royalty payments to those mineral owners whose title and ownership interest is not in dispute.

Approved March 2, 2007  
Filed March 2, 2007

**CHAPTER 402****HOUSE BILL NO. 1058**

(Industry, Business and Labor Committee)  
(At the request of the Board of University and School Lands)

**ABANDONED PROPERTY NOTICES**

AN ACT to amend and reenact section 47-30.1-01 and subsection 1 of section 47-30.1-18 of the North Dakota Century Code, relating to abandoned property under the Uniform Unclaimed Property Act.

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

**SECTION 1. AMENDMENT.** Section 47-30.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**47-30.1-01. Definitions and use of terms.** As used in this chapter:

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, limited liability company, 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 or state of organization of a limited liability company 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, 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.~~
- ~~44.~~ "Mineral proceeds" means all obligations to pay resulting from the production and sale of minerals, including net revenue interest, royalties, overriding royalties, production payments, and joint operating agreements and all obligations for the acquisition and retention of a mineral lease, including bonuses, delay rentals, shut-in royalties, and minimum royalties.
- ~~42.~~ 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 this chapter or that person's legal representative.
- ~~43.~~ 12. "Person" means an individual, business association, state or other government including the government of the United States, governmental subdivision or agency, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.
- ~~44.~~ 13. "State" means any state, district, commonwealth, territory, insular possession, or any other area subject to the legislative authority of the United States.
- ~~45.~~ 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. AMENDMENT.** Subsection 1 of section 47-30.1-18 of the North Dakota Century Code is amended and reenacted as follows:

1. The administrator shall cause a notice to be published not later than October first of the year immediately following the report required by section 47-30.1-17 at least once a week for two ~~consecutive~~ weeks in a newspaper of general circulation in the county of this state in which is located the last-known address of any person to be named in the notice. If no address is listed or the address is outside this state, the notice must be published in the county in which the holder of the property has its principal place of business within this state.

Approved March 7, 2007

Filed March 8, 2007

# PUBLIC BUILDINGS

## CHAPTER 403

### HOUSE BILL NO. 1033

(Legislative Council)  
(Industry, Business, and Labor Committee)

## PUBLIC IMPROVEMENT CONTRACTS

AN ACT to create and enact chapter 48-01.2 of the North Dakota Century Code, relating to public improvements, bidding, construction management, and public improvement contracts; to amend and reenact section 11-11-26, subdivision f of subsection 1 of section 15.1-09-34, sections 23-11-11, 25-01.1-33, 40-22-19, 40-28-07, 40-29-07, 40-31-04, and 40-33.2-09, subsection 7 of section 40-33.3-06, section 40-49-14, subsection 12 of section 40-57-03, sections 43-07-23, 48-05-12, and 57-40.2-14, subsection 2 of section 61-02-04.1, subsection 2 of section 61-02-23.2, sections 61-07-09, 61-12-25, 61-16.1-14, 61-21-25, 61-21-45, 61-24.3-03.1, 61-35-13, and 61-35-88, and subsection 2 of section 61-35-94 of the North Dakota Century Code, relating to public improvements, bidding, and public improvement contracts; and to repeal chapters 48-01.1 and 48-02 of the North Dakota Century Code, relating to public improvements, bidding, and public improvement contracts.

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

**SECTION 1. AMENDMENT.** Section 11-11-26 of the North Dakota Century Code is amended and reenacted as follows:

**11-11-26. When board shall advertise for bids.** Except as provided in ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2, when the amount to be paid during the current year for the erection of county buildings or for election ballots and supplies exceeds ten thousand dollars, the board of county commissioners shall cause an advertisement for bids to be published at least once each week for two successive weeks in the official newspaper of the county and in such other newspapers as it shall deem advisable. The first publication shall be made at least fifteen days before the day set for the opening of the bids. For the purchase of fuel when the amount exceeds four thousand dollars, the board of county commissioners shall seek bids either by telephone solicitation from at least two suppliers, or by an advertisement for bids to be published at least once each week for two successive weeks in the official newspaper of the county and in other newspapers as the board deems advisable.

**SECTION 2. AMENDMENT.** Subdivision f of subsection 1 of section 15.1-09-34 of the North Dakota Century Code is amended and reenacted as follows:

- f. Building construction projects under ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2.

<sup>201</sup> **SECTION 3. AMENDMENT.** Section 23-11-11 of the North Dakota Century Code is amended and reenacted as follows:

**23-11-11. Powers of authority.** An authority has the following powers and duties:

1. To exercise public and essential governmental functions.
2. To sue and be sued.
3. To have perpetual succession.
4. To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority.
5. To make, amend, and repeal such bylaws, rules, and regulations, not inconsistent with this chapter, as are necessary to carry into effect the powers and purposes of the authority.
6. To prepare, carry out, acquire, lease, and operate housing projects within its area of operation.
7. To provide for the construction, reconstruction, improvement, alteration, or repair of any housing project, or any part of a housing project, within the authority's area of operation.
8. To arrange or contract for the furnishing by any person or any public or private agency of services, privileges, works, or facilities for, or in connection with, a housing project or the occupants of a housing project.
9. To include, in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractor comply with requirements as to minimum wages and maximum hours of labor and any conditions that the federal government may have attached to the financial aid for the project.
10. To lease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project and, subject to the limitations contained in this chapter, to establish and revise the rents or charges in the housing project.
11. To own, hold, and improve property.
12. To purchase, lease, obtain options upon, or acquire, by gift, grant, bequest, devise, or otherwise, any property or any interest in property.
13. To acquire real property by the exercise of the power of eminent domain.

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<sup>201</sup> Section 23-11-11 was also amended by section 12 of Senate Bill No. 2214, chapter 293, and section 1 of Senate Bill No. 2273, chapter 242.

14. To sell, lease, exchange, transfer, assign, pledge, or dispose of any property, or any interest in property.
15. To insure, or provide for the insurance of, any property, or any operation of the authority, against any risks or hazards.
16. To procure insurance or guaranties from the federal government of the payment of any debts, or parts of debts, secured by mortgages on any property included in any of the authority's housing projects, whether the debts were incurred by the authority or not.
17. To invest any funds held by the authority in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to a savings bank's control.
18. To purchase its bonds at a price not more than the principal amount of the bonds and accrued interest, a bond so purchased is canceled.
19. To investigate, in the authority's area of operation, living, dwelling, and housing conditions and the means and methods of improving the same.
20. To determine, within the authority's area of operation, where slum areas exist or where there is a shortage of decent, safe, and sanitary dwelling accommodations for persons of low or moderate income.
21. To make studies and recommendations relating to the problem of clearing, replanning, and reconstructing the slum areas within the authority's area of operation and the problem of providing dwelling accommodations for the persons of low or moderate income, and to cooperate with the city, county, or state, or any political subdivision in any action taken in connection with these problems.
22. To engage in research, studies, and experimentation on the subject of housing within the authority's area of operation.
23. To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for the authority's information.
24. To administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers, and to issue commissions for the examinations of witnesses who are outside of the state or unable to attend before the authority or who are excused from attendance.
25. To make available to appropriate agencies, including those charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or unsanitary structures within the authority's area of operation, the authority's findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety, or welfare.
26. To issue bonds from time to time for any of its corporate purposes.

27. To issue refunding bonds for the purpose of paying or retiring bonds previously issued by the authority.
28. To borrow money or accept grants or other financial assistance from the federal government for, or in aid of, any housing project within the authority's area of operation.
29. To take over or lease or manage any housing project or undertaking constructed or owned by the federal government.
30. To comply with conditions and to enter into mortgages, trust indentures, leases, or agreements as may be necessary, convenient, or desirable to carry out this section.
31. To do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance, or operation of any housing project.
32. To exercise all or any part or combination of powers granted.
33. To exercise within the authority's area of operation the authority granted to the industrial commission under section 54-17-07.6.
34. To exercise the power to provide operation and maintenance expenses under subdivision a of subsection 23 of section 23-11-24.
35. To exercise the power to issue general obligation bonds in accordance with chapter 21-03.
36. To develop a plan identifying the public purposes of the authority's ownership, conditions that would make the authority's ownership no longer necessary for accomplishing those public purposes, and a plan to divest the authority's ownership interest as soon as economically prudent once those conditions occur and to effectuate the plan.
37. To exercise other powers and duties as may be necessary to carry out the purposes and provisions of this chapter.

An authority, in exercising the powers specified in subsections 23, 24, and 25, may act through one or more of the commissioners or through other persons designated by the authority. Provisions of law with respect to the acquisition, operation, or disposition of property by other public bodies are not applicable to an authority unless there is specific provision to that effect by the legislative assembly. The construction of a housing project is a public improvement for which an authority is subject to the ~~competitive bidding~~ requirements of chapter ~~48-01.1~~ 48-01.2.

**SECTION 4. AMENDMENT.** Section 25-01.1-33 of the North Dakota Century Code is amended and reenacted as follows:

**25-01.1-33. Use of patient labor in erection or repair of buildings of institutions.** All work for the erection, repair, or improvement of buildings, grounds, or properties under the control of the supervising department must be let by contract, except that the work of patients in such institutions may be utilized if approved by the superintendent of such institution as having possible benefits to the patient and not detrimental to the patient's health or treatment and when the use of such labor will



not substantially depart from the requirements of ~~chapters 48-01.4 and 48-02~~ chapter 48-01.2.

**SECTION 5. AMENDMENT.** Section 40-22-19 of the North Dakota Century Code is amended and reenacted as follows:

**40-22-19. Contract proposals.** Proposals for the work of making improvements provided for in this chapter must be advertised for by the governing body in the official newspaper of the municipality once each week for two consecutive weeks. All other provisions for proposals under this chapter are governed by ~~chapters 48-01.4 and 48-02~~ chapter 48-01.2.

**SECTION 6. AMENDMENT.** Section 40-28-07 of the North Dakota Century Code is amended and reenacted as follows:

**40-28-07. Bids for service connections.** The governing body shall direct the city auditor to advertise for bids in accordance with ~~chapters 48-01.4 and 48-02~~ chapter 48-01.2 for the laying and construction of service connections in accordance with the plans and specifications therefor.

**SECTION 7. AMENDMENT.** Section 40-29-07 of the North Dakota Century Code is amended and reenacted as follows:

**40-29-07. Bids for sidewalks.** Bids for the construction of sidewalks in a city must be made in accordance with ~~chapters 48-01.4 and 48-02~~ chapter 48-01.2.

**SECTION 8. AMENDMENT.** Section 40-31-04 of the North Dakota Century Code is amended and reenacted as follows:

**40-31-04. Letting contracts for curbing.** At least once every year that the city plans to construct or repair curbing or gutters, the city auditor shall solicit bids in accordance with ~~chapters 48-01.4 and 48-02~~ chapter 48-01.2.

**SECTION 9. AMENDMENT.** Section 40-33.2-09 of the North Dakota Century Code is amended and reenacted as follows:

**40-33.2-09. Construction contracts.** A city or municipal power agency may contract for the planning, acquisition, construction, reconstruction, operation, maintenance, repair, extension, and improvement of generation and transmission facilities outside of its corporate limits or those of its members, or may contract with other public or private owners of these facilities to perform these functions, without advertising for bids, preparing final plans and specifications in advance of construction, or securing performance and payment bonds. If a payment bond is secured as provided in chapter ~~48-02~~ 48-01.2, it is enforceable as therein provided, and no lien may be filed under chapter 35-27.

**SECTION 10. AMENDMENT.** Subsection 7 of section 40-33.3-06 of the North Dakota Century Code is amended and reenacted as follows:

7. May contract with any person for the construction of any project or for the sale, transmission, or distribution of liquids or of natural or synthetic gas by any project, or for any interest therein or any right to capacity thereof, upon such terms as the authority determines. If a payment bond is secured as provided in chapter ~~48-02~~ 48-01.2, no lien may be filed under chapter 35-27.

**SECTION 11. AMENDMENT.** Section 40-49-14 of the North Dakota Century Code is amended and reenacted as follows:

**40-49-14. When yea and nay vote taken - Letting contracts - Debt limit - Bills, claims, and demands against board.** Yea and nay votes must be taken on all propositions involving the expenditure of money, levying of taxes, or the issuance of bonds or certificates of indebtedness. Approval of an expenditure of money must be recorded in the record of the board's proceedings and this shall be sufficient to indicate approval without requiring the members to sign or initial the voucher or order for payment. Except as provided in ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2, all contracts exceeding ten thousand dollars must be let to the lowest responsible bidder after advertisement in the official newspaper of the municipality once each week for two successive weeks. The board may reject any or all bids. All contracts must be in writing and must be signed by the president of the board or a designated representative and unless so executed, they shall be void. The debt of a park district may not exceed one percent of the taxable property within the district according to the last preceding assessment. No bill, claim, account, or demand against the district may be audited, allowed, or paid until a full, written, itemized statement has been filed with the governing body or unless otherwise authorized by the governing body pursuant to contract or other action. The governing body, in its discretion, may require the filing of any additional information which it may deem necessary to the proper understanding and audit of any claim or account and it may require the filing of a sworn statement in such form as it may prescribe or as noted below:

CERTIFICATE

I do hereby certify that the within bill, claim, account, or demand is just and true; that the money therein charged was actually paid for the purposes therein stated; that the services therein charged were actually rendered and of the value therein charged; and that no part of such bill, claim, account, or demand has been paid; and that the goods therein charged were actually delivered and were of the value charged.

Sign here \_\_\_\_\_

\_\_\_\_\_  
If signed for a firm or company,  
show authority on this line.

**SECTION 12. AMENDMENT.** Subsection 12 of section 40-57-03 of the North Dakota Century Code is amended and reenacted as follows:

12. If the project financed by the municipality consists of the construction, reconstruction, improvement, or betterment of real property, buildings and improvements on real property, and buildings, the provisions of chapter ~~48-02~~ 48-01.2 and other applicable statutes shall apply; except that the municipality, in the revenue agreement and resolution or mortgage defining the terms and conditions upon which the project is to be constructed and financed, or in a preliminary agreement establishing the general terms of the revenue agreement and financing of the project when constructed, may permit a contracting party which is not a governmental entity or a public institution, subject to such terms and conditions as the municipality shall find necessary or desirable and proper, to provide for the construction, acquisition, and installation of the buildings, improvements, and equipment to be included in the project by any means available to the contracting party, whether or not the

procedure followed by the contracting party is in conformity with said chapter ~~48-02~~ 48-01.2.

**SECTION 13. AMENDMENT.** Section 43-07-23 of the North Dakota Century Code is amended and reenacted as follows:

**43-07-23. Allowable retention of estimates - Interest on retainage.**

Contracts entered ~~into~~ between persons for the performance of work to be done by a contractor, except those contracts subject to section 40-22-37 or ~~48-02-07~~ 48-01.2-13, or contracts governed by federal statutes or regulations which require other provisions with respect to retention, are subject to a maximum retention on amounts due under the contract as follows: retention of ten percent of each estimate presented is allowable until such time as the project is fifty percent complete, with no further retainage on estimates during the continuance of the contract. If the owner, governing board, or authorized committee invests the retained estimate funds, the interest earned on those retained funds is payable at the time of final payment on the contract to the contractor on whose account the moneys were held.

**SECTION 14.** Chapter 48-01.2 of the North Dakota Century Code is created and enacted as follows:

**48-01.2-01. Definitions.** In this chapter, unless the context otherwise requires:

1. "Agency construction management" means a public improvement delivery method through which a person provides to a governing body experienced construction management services, including ideas on constructability, documentation of design and construction, and coordination of project schedules.
2. "Architect" means an individual registered as an architect under chapter 43-03.
3. "Common ownership" means a shared management or ownership interest in two or more entities.
4. "Construction" means the process of building, altering, repairing, improving, or demolishing any public structure or building or other improvement to any public property. The term does not include the routine operation or maintenance of existing facilities, structures, buildings, or real property or demolition projects costing less than one hundred thousand dollars.
5. "Construction administration" means administrative services provided by a governing body or an architect, a landscape architect, or an engineer, and includes providing clarifications, submittal review, recommendations for payment, preparation of change orders, and other administrative services included in the agreement with the architect, landscape architect, or engineer. The term does not include supervision of the construction activities for the construction contracts.
6. "Construction management at-risk" means a public improvement delivery method through which a construction manager provides advice to the governing body during the planning and design phase of a public improvement, negotiates a contract with the governing body for the general construction bid package of the public improvement, and

contracts with subcontractors and suppliers for the actual construction of the public improvement.

7. "Construction manager" means a contractor licensed under chapter 43-07 or an individual employed by a licensed contractor which has the expertise and resources to assist a governing body with the management of the design, contracting, and construction aspects of a public improvement.
8. "Construction observation" means observation of construction work and site visits by an architect, a landscape architect, or an engineer to assist the governing body in determining that the work conforms in general to the requirements of the construction contract and that the contractor has implemented and maintained the integrity of the design concept of a project as a functioning whole as indicated in the construction contract.
9. "Contract" means a type of agency agreement for the procurement of services under this chapter.
10. "Contractor" means any person, duly licensed, that undertakes or enters a contract with a governing body for the construction or construction management of any public improvement, including multiple prime contracts.
11. "Design services" means architect services, engineer services, landscape architect services, or surveyor services.
12. "Design-bid-build" means a project delivery method in which design and construction of the project are in sequential phases, and in which the first project phase involves design services, the second project phase involves securing a contractor through a bidding process, and the third project phase provides for construction of the project by a contractor awarded the project.
13. "Emergency situation" means a sudden generally unexpected occurrence that requires immediate action to protect public health, safety, or property and which ends when the immediate threat to public health, safety, or property ceases and services are restored. The term does not include a lack of planning on the part of the governing body, architect, engineer, landscape architect, or contractor.
14. "Engineer" means an individual registered as an engineer under chapter 43-19.
15. "General conditions" means the written portion of a contract setting forth the governing body's minimum acceptable performance requirements, including the rights, responsibilities, and relationships of the parties involved in the performance of the contract.
16. "Governing body" means the governing officer or board of a state entity or a political subdivision.
17. "Guaranteed maximum price" means the maximum amount a construction manager at-risk may be paid under a contract to construct a public improvement.

18. "Landscape architect services" means landscape architecture services governed under chapter 43-03.
19. "Lowest responsible bidder" means the lowest best bidder for the project considering past experience, financial condition, past work with the governing body, and other pertinent attributes that may be identified in the advertisement for bids.
20. "Public improvement" means any improvement undertaken by a governing body for the good of the public and which is paid for with public funds and constructed on public land or within a public building and includes an improvement on public or nonpublic land if any portion of the construction phase of the project is paid for with public funds. The term does not include a county road construction and maintenance, state highway, or public service commission project governed by title 11, 24, or 38.
21. "Subcontractor" means a person that contracts to perform work or render a service to a contractor or to another subcontractor as part of a contract with a governing body.

**48-01.2-02. Plans and specifications for a public improvement contract.**

Except as otherwise provided in this chapter, if a contract for the construction of a public improvement is estimated to cost in excess of one hundred thousand dollars, the governing body shall procure plans, drawings, and specifications for the improvement from an architect or engineer. For a public building in use by or to be used by the North Dakota agricultural experiment station in connection with farm or agricultural research operations, the plans, drawings, and specifications, with the approval of the state board of higher education, may be prepared by an engineer in the regular employment of the agricultural experiment station. For a public building in use by or to be used by the department of transportation for the storage and housing of road materials or road machinery, equipment, and tools, the plans, drawings, and specifications may be prepared by an engineer employed by the department of transportation.

**48-01.2-03. Specified brands, marks, names, or patented articles may not be specified.** A governing body, in specifying materials to be used for a public improvement or in plans or specifications for a public improvement, may not request bids for any article of a specified or copyrighted brand or name, the product of any one manufacturer, or any patented apparatus or appliance when the requirement will prevent proper competition, unless the specifications also request bids on other similar articles of equal value, utility, and merit.

**48-01.2-04. Publication of advertisement for bids - Emergency exception.**

1. Except as otherwise provided in this chapter, if the construction of a public improvement is estimated to cost in excess of one hundred thousand dollars, the governing body shall advertise for bids by publishing for three consecutive weeks. The first publication of the advertisement must be at least twenty-one days before the date of the opening of bids. The advertisement must be published in the official newspaper of the political subdivision in which the public improvement is or will be located, and in a trade publication of general circulation among the contractors, building manufacturers, and dealers in this state, except the advertisement for a public improvement financed by special

assessments need be published only once each week for two weeks in the official newspaper with the first publication being at least fourteen days before the bid opening.

2. If a governing body declares an emergency situation, the governing body may contract for the construction of a public improvement without seeking bids.

**48-01.2-05. Contents of advertisement.** The advertisement for bids required by section 48-01.2-04 must state:

1. The nature of the work and the type and location of the proposed public improvement.
2. When and where the plans, drawings, and specifications may be seen and examined.
3. The place, date, and time the bids will be opened.
4. That each bid must be accompanied by a separate envelope containing the contractor's license and bid security. The bid security must be in a sum equal to five percent of the full amount of the bid and must be in the form of a bidder's bond. A bidder's bond must be executed by the bidder as principal and by a surety, conditioned that if the principal's bid is accepted and the contract awarded to the principal, the principal, within ten days after notice of the award, shall execute a contract in accordance with the terms of the bid and the bid bond and any condition of the governing body. A countersignature of a bid bond is not required under this section. If a successful bidder does not execute a contract within the ten days allowed, the bidder's bond must be forfeited to the governing body and the project awarded to the next lowest responsible bidder.
5. That a bidder, except a bidder on a municipal, rural, and industrial water supply project using funds provided under Public Law No. 99-294 [100 Stat. 426; 43 U.S.C. 390a], must be licensed for the full amount of the bid as required by sections 43-07-05 and 43-07-12. For projects using funds provided under Public Law No. 99-294 [100 Stat. 426; 43 U.S.C. 390a], the advertisement must state that, unless a bidder obtains a contractor's license for the full amount of its bid within twenty days after it is determined the bidder is the lowest responsible bidder, the bid must be rejected and the contract awarded to the next lowest responsible bidder.
6. That no bid may be read or considered if the bid does not fully comply with the requirements of this section and that any deficient bid submitted must be resealed and returned to the bidder immediately.
7. That the governing body reserves the right to reject any and all bids and rebid the project until a satisfactory bid is received.

**48-01.2-06. Bid requirements for public improvements.** Multiple prime bids for the general, electrical, and mechanical portions of a project are required when any individual general, electrical, or mechanical contract or any combination of individual contracts is in excess of one hundred thousand dollars. If a general, mechanical, or electrical contract is estimated to be less than twenty-five thousand

dollars, the contract may be included in one of the other prime contracts. A governing body may allow submission of a single prime bid for the complete project or bids for other specialized portions of the project. A governing body may not accept the single prime bid unless that bid is lower than the combined total of the lowest responsible multiple bids for the project.

**48-01.2-07. Opening of bids - Award of contract.** At the time and place specified in the notice, a governing body shall open publicly and read aloud each responsible bid received and award the contract to the lowest responsible bidder. A governing body may reject any and all bids and readvertise for bids if no bid is satisfactory or if the governing body determines any agreement has been entered by the bidders or others to prevent competition. The governing body may advertise for new bids in accordance with this chapter until a satisfactory bid is received.

**48-01.2-08. Officers must not be interested in contract.** A governing body, or any member, employee, or appointee of a governing body, may not be pecuniarily interested or concerned in a contract for a public improvement entered by the governing body.

**48-01.2-09. Contract with successful bidder.** A governing body shall enter a contract with the lowest responsible bidder as determined under section 48-01.2-07. The contract must contain the following:

1. The written terms of the agreement and any associated document signed by the governing body and the contractor;
2. The required surety bond; and
3. Any other document deemed appropriate by the governing body and identified in the advertisement for bids.

**48-01.2-10. Bonds from contractors for public improvements.**

1. Unless otherwise provided under this chapter, a governing body authorized to enter a contract for the construction of a public improvement in excess of one hundred thousand dollars shall take from the contractor a bond before permitting any work to be done on the contract. The bond must be for an amount equal at least to the price stated in the contract. The bond must be conditioned to be void if the contractor and all subcontractors fully perform all terms, conditions, and provisions of the contract and pay all bills or claims on account of labor performed and any supplies, and materials furnished and used in the performance of the contract, including all demands of subcontractors. The requirement that bills and claims be paid must include the requirement that interest of the amount authorized under section 13-01-14 be paid on bills and claims not paid within ninety days. The bond is security for all bills, claims, and demands until fully paid, with preference to labor and material suppliers as to payment. The bond must run to the governing body, but any person having a lawful claim against the contractor or any subcontractor may sue on the bond.
2. A governing body may not require any person required to provide a surety bond to obtain the surety bond from a specified insurance or surety company or insurance producer or to submit financial data to the company or producer.

**48-01.2-11. Claim for public improvement - Suit on contractor's bond.** A person that has furnished labor or material for any public improvement for which a bond is furnished and has not been paid in full within ninety days after completion of the contribution of labor or materials may sue on the bond for the amount unpaid at the time of institution of suit. However, a person having a direct contractual relationship with a subcontractor, but no contractual relationship with the contractor furnishing the bond, does not have a claim for relief upon the bond unless that person has given written notice to the contractor, within ninety days from the date on which the person completed the contribution, stating with substantial accuracy the amount claimed and the name of the person for which the contribution was performed. The notice must be served by registered mail in an envelope addressed to the contractor at any place the contractor maintains an office, conducts business, or has a residence.

A governing body shall provide a certified copy of the bond and the contract for which the bond was given to any individual who submits an affidavit that either the individual has supplied labor or materials for the improvement and that payment has not been made or that the individual is being sued on the bond. The individual requesting the copy shall pay the actual cost of the preparation of the certified copy of the bond and the contract. The certified copy of the bond is prima facie evidence of the contents, execution, and delivery of the original.

**48-01.2-12. Claims - When barred as liens against contractor and surety.** Any claim for any labor, material, or supply furnished for an improvement, upon which a suit is not commenced within one year after completion and acceptance of the project, is barred as a lien or claim against the contractor and the contractor's surety and any right of setoff or counterclaim may be enforced in any court in this state against the governing body, the contractor, or the contractor's surety. This chapter does not bar the right of any person who has furnished any labor, supply, or material to any subcontractor to enforce the claim against the subcontractor.

**48-01.2-13. Payments.** At least once in each calendar month during the continuance of work upon any public improvement, the governing body shall receive and consider any partial payment estimate prepared by the architect or engineer. Upon review and approval, the governing body shall pay an estimate in an amount equal to the estimated value of the labor and material furnished plus the material adequately stored. A partial payment estimate must include retentions or retainage as follows: ten percent of each estimate until the project is fifty percent completed with no further retainage on estimates during the continuance of the contract unless unsatisfactory progress or performance is documented. The governing body may, upon completion of ninety-five percent of the contract, pay to the contractor up to ninety-five percent of the amount retained from previous estimates. The remaining amount retained must be paid to the contractor in the amounts and at the times approved by the architect or engineer. The governing body shall make final payment of all moneys due to the contractor following completion of all work, acceptance of the project by the governing body, and the provision of necessary releases. If an architect or engineer is not employed by the governing body for administration of the contract, the contractor, at the end of each calendar month during the continuance of work, may furnish a payment estimate to the governing body. After considering and approving an estimate, the governing body shall draw a warrant upon the proper fund and promptly transmit the warrant to the contractor. The governing body may invest or deposit any retained amount in a financial association or institution so that the contractor's money retained is earning interest or dividends for the benefit of the contractor. Any amount invested or deposited must remain in the name of the governing body until final payment of all money due to the contractor is to be made.



**48-01.2-14. Late payment - Rate of interest.** If a governing body fails or neglects to consider any estimate properly submitted, pay any estimate approved, or make final payment upon completion and acceptance of a public improvement, for a period of more than thirty days from the date of approval of the estimate or the completion and acceptance date, the governing body shall pay interest on the estimate or final payment from the date of approval. The interest rate must be the rate per annum of two percentage points below the Bank of North Dakota prime interest rate as set thirty days from the date of the estimate or completion date until the issuance of a proper warrant for the payment. The governing body shall compute and add the interest to the face of the estimate or final payment and the interest must be charged to the fund upon which payment for the contract is to be made. No payment for, or on account of, any contract made under this chapter may be made except upon estimate of the architect, engineer, or contractor as provided in section 48-01.2-13.

**48-01.2-15. Appropriations may not be diverted.** No portion of any special appropriation for the erection of any public improvement, or for the doing of any work, may be drawn from the state treasury in advance of the work being completed or of the materials furnished. The funds may be drawn only upon proper estimates approved by the governing body of the institution for which the improvement is being constructed. No portion of any appropriation for any purpose may be drawn from the treasury before the appropriation is required for the purpose for which it is made, and no appropriation that is or may be made for any purpose with respect to the construction or improvement may be drawn or used for any other purpose until the construction or improvement for which the appropriation was made is fully completed and paid for.

**48-01.2-16. Architects, landscape architects, and engineers - Duties.** The governing body shall employ the architect, landscape architect, or engineer furnishing the plans as provided in this chapter or some other qualified person to provide construction administration and construction observation services for which the plans and specifications are prepared as provided by section 48-01.2-02. The architect, landscape architect, or engineer shall assist the governing body in determining that the contractor performs the work in accordance with the intent of the plans and specifications. As part of a site visit or construction observation, the architect, landscape architect, or engineer may not supervise, direct, or have control over the contractor's work. The architect, landscape architect, or engineer may not exercise control over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by the contractor, the quality control of the work, the security or safety on the site, any safety precaution or program incident to the contractor's work, the failure of the contractor to comply with any law or rule applicable to the contractor's furnishing of or performance of the work, or the failure of the contractor to furnish or perform the work in accordance with the construction contract. The architect, landscape architect, or engineer is entitled to receive a reasonable compensation to be fixed by the governing body. Any duty imposed or power conferred upon the governing body by this chapter applies to a successor to the governing body.

**48-01.2-17. Coordination of work under multiple prime bids.** If a public improvement is awarded as multiple prime contracts for the general, electrical, mechanical work, and other prime contracts as contained in the bid for the project, the governing body may assign the coordination of the electrical and mechanical contracts and any other contracts to the general contractor for the project to facilitate the coordination of the work.

**48-01.2-18. Construction management - Governing body determinations.**

1. Notwithstanding any other provision of law, a governing body may use the agency construction management or construction management at-risk delivery methods for construction of a public improvement if:
  - a. The agency construction manager has no common ownership or conflict of interest with the architect, landscape architect, or engineer involved in the planning and design of the public improvement or with any person engaged in the construction of the public improvement.
  - b. The construction manager at-risk has no common ownership or conflict of interest with the architect, landscape architect, or engineer involved in the planning and design of the public improvement.
2. Before utilizing the agency construction management or construction management at-risk delivery method, a governing body shall make the following determinations:
  - a. That it is in the best interest of the public to utilize the agency construction manager or construction manager at-risk public improvement delivery method.
  - b. That the agency construction manager or construction manager at-risk planning and design phase services will not duplicate services normally provided by an architect or engineer.
  - c. That the agency construction manager or construction manager at-risk construction services will be in addition to and not duplicate the services provided for in the architect and engineer contracts.
3. The governing body shall provide written documentation of the determinations provided for under subsection 2 upon written request from any individual.

**48-01.2-19. Agency construction management procurement procedures**

**- Contract.**

1. A governing body electing to utilize the agency construction management delivery method shall establish a construction management services selection committee composed of individuals the governing body determines to be qualified to make an informed decision as to the most competent and qualified person for the proposed public improvement.
2. The agency selection committee shall:
  - a. Develop a description of the proposed public improvement;
  - b. Enumerate each required agency construction management service for the proposed public improvement; and

- c. Prepare the formal invitation request for qualifications, which must include the project title, the general scope of work, a description of each service required for the public improvement, the final selection criteria, the address to which responses to the request must be submitted, and the deadline for submission of responses.
3. The governing body shall publish a notice of the request for qualifications in a newspaper of general circulation in the county in which the public improvement is located and in a construction trade publication in general circulation among the contractors, building manufacturers, and dealers in this state and shall be published for three consecutive weeks, with the first publication being at least twenty-one days before the date of opening of the request for qualifications. Upon written request, the governing body shall mail a copy of the invitation to any interested party.
4. After the submission deadline, the selection committee shall hold interviews with at least three persons that have responded to the advertisement and which are deemed most qualified on the basis of information available before the interviews. If less than three persons have responded to the advertisement, the committee may readvertise or hold interviews with any person that submitted a response. The selection committee's determination as to which person will be interviewed must be in writing and must be based upon the committee's review and evaluation of all materials submitted. The written report of the committee must list the name of each person that responded to the advertisement and enumerate any reason for selecting any person to be interviewed. The written report must be available to the public upon written request. The purpose of the interviews must be to provide any information required by the selection committee to fully acquaint the committee members with the relative qualifications of each person that responded to the advertisement.
5. The selection committee shall evaluate each person interviewed on the basis of the following criteria:
  - a. The past performance of the person with respect to prior public improvements.
  - b. The qualifications of proposed personnel.
  - c. The willingness to meet time and budget requirements of the governing body.
  - d. The business location of the person.
  - e. The recent, current, and projected workloads of the person.
  - f. Any related experience performing agency construction management services on projects of similar size and scope.
  - g. Any recent or current work by the person for the agency.
  - h. The ability of the person to provide the bond for the person's portion of the work on the public improvement.

- i. The possession by the person of a class A contractor's license.
6. Based upon the evaluation under subsection 5, the selection committee shall rank the three persons which, in its judgment, are most qualified. If fewer than three persons responded to the advertisement, the selection committee shall rank each person that responded. The selection committee's report ranking the interviewed persons must be in writing and must include data substantiating the committee's determinations. The data must be available to the public upon written request.
7. The selection committee shall submit its written report ranking the interviewed persons to the governing body for evaluation and approval by the governing body. The governing body shall determine the final ranking of each person and provide written notification of the order of preference to each person that responded to the request for qualifications.
8. After providing the notice under subsection 7, the governing body shall negotiate a contract for services with the most qualified person at a compensation which is fair and reasonable to the governing body. If the governing body is unable to negotiate a satisfactory contract with that person, the governing body shall terminate negotiations with that person and commence negotiations in the same manner with the second and then the third most qualified person until a satisfactory contract has been negotiated. If no agreement is reached, three additional persons in order of the original ranking must be selected after consultation with the selection committee, and negotiations must be continued in the same manner until agreement is reached.
9. The governing body, at any time, may reject all proposals and readvertise or select another allowed project delivery method.

**48-01.2-20. Selection process for construction management at-risk planning and design phase services.**

1. A governing body electing to utilize a construction management at-risk delivery process for a proposed public improvement shall create a selection committee composed of:
  - a. An administrative individual from the governing body.
  - b. A registered architect.
  - c. A registered engineer.
  - d. A contractor.
2. The governing body may compensate members of the selection committee. A member of the selection committee is not eligible to submit a proposal for the construction management at-risk contract under consideration.
3. Before issuing a notice of request for qualifications to enter a construction management at-risk services contract, the selection committee shall establish the content of the request for qualifications, which must include the following:

- a. The identity of the governing body and a list of the members of the selection committee;
  - b. A description of the proposed public improvement;
  - c. The proposed budget limits of the public improvement;
  - d. The commencement and completion date of the public improvement;
  - e. The procedures to be used in submitting proposals;
  - f. The qualifications evaluation criteria and the relative weighting of items;
  - g. The subcontractor selection process to be used for construction services;
  - h. The number of persons to be included in the final list;
  - i. A statement indicating whether formal interviews will be held;
  - j. A statement indicating whether fees and prices must be included in any proposal;
  - k. A description of contract terms and conditions for the construction management at-risk services contract, including a description of the scope of services to be provided;
  - l. A description of the procedures to be used for making the contract award;
  - m. The insurance and bonding requirements and a statement requiring any person submitting a proposal to include with the proposal a certificate of insurance, indicating liability coverage; and
  - n. The identification and location of other pertinent information the governing body may possess, including surveys, soils reports, drawings or models of existing structures, environmental studies, photographs, or references to public records.
4. The request for qualifications submittal procedures must include the specific format that must be used by a construction manager at-risk when submitting a request for qualifications and the submission deadline location for submission of the request for qualifications.
  5. The selection committee shall determine the appropriate evaluation criteria for each request for qualifications, including:
    - a. The person's experience on any similar project;
    - b. The person's existing workload and available capacity;
    - c. The person's key personnel experience on any similar project;
    - d. The person's safety record;

- e. The person's familiarity with the location of the public improvement;
  - f. The person's fees and expenses;
  - g. The person's compliance with state and federal law; and
  - h. Any reasonable information the selection committee deems necessary.
6. The selection committee shall evaluate each submission based on the qualification criteria under subsection 5 and shall include the numeric scoring of each criteria item on a weighted basis, with no item being weighted at more than twenty percent and no less than five percent. The weighting of the qualification criteria must be done in a manner to ensure no subjective bias and encourage the maximum participation of qualified construction managers at-risk.
7. a. The selection committee shall review each proposal submitted and include the three highest ranked construction managers at-risk on a list of finalists. If fewer than three proposals were submitted, the governing body may resolicit for qualifications, interview any person that applied, or consider using another allowed delivery method. The selection committee shall recommend to the governing body the construction manager at-risk receiving the highest score on the evaluation criteria.
- b. If a construction manager at-risk selected for a public improvement declines the appointment or is unable to reach agreement with the governing body concerning fees or terms of the contract, the governing body shall terminate negotiations with the construction manager at-risk and begin negotiations with the construction manager at-risk with the next highest score and continue that process until agreement is reached or the list of finalists is exhausted.
- c. If the list of finalists is exhausted, the governing body shall request the selection committee to revise the request for qualifications and solicit new submissions. If the selection committee is unable to provide any constructive revision to the request for qualifications, the governing body shall select another allowed public improvement delivery method.
- d. The governing body, upon reaching an agreement with a construction manager at-risk on compensation and contract terms for construction management planning and design services, shall enter a written contract with the construction manager at-risk for the services.

**48-01.2-21. Selection process for construction management at-risk services - Construction services.** After the governing body and the construction manager at-risk have finalized the contract for planning and design phase services and the process has progressed sufficiently to provide the construction manager at-risk the necessary project details, the governing body and the construction manager at-risk shall enter negotiations for a guaranteed maximum price and contract terms for the general construction of the public improvement. If the governing body is unable to negotiate a satisfactory contract with the highest

qualified person on the list of finalists, the governing body shall terminate negotiations with that person. The governing body shall commence negotiations with the next most qualified person on the list in sequence until an agreement is reached or a determination is made to reject all persons on the list. If the governing body reaches an agreement with a construction manager at-risk on a guaranteed maximum price and on contract terms, the governing body and construction manager at-risk shall enter a written contract for the general construction management at-risk construction services.

**48-01.2-22. Subcontractor bids.**

1. An agency construction manager selected for a public improvement shall advertise publicly and receive bids from subcontractors for the work items necessary to complete the general construction portions of the improvement. The governing body may influence the selection of the subcontractors, but only insofar as the governing body's past experience with a subcontractor or a current legal dispute with a subcontractor.
2. A construction manager at-risk selected for a public improvement shall advertise publicly and receive bids from subcontractors for the work items the construction manager at-risk chooses not to perform. The governing body may influence the selection of the subcontractors, but only insofar as the governing body's past experience with a subcontractor or a current legal dispute with a subcontractor.

**48-01.2-23. Bond required.**

1. An agency construction manager, before starting any work, shall provide the governing body with a bond that is equal to the cost of the agency construction manager's services with the governing body. Each contractor performing services on the public improvement shall provide the governing body with a separate bond for the contractor's portion of the public improvement.
2. A construction manager at-risk, before starting any construction, shall provide the governing body with a bond in an amount at least equal to the amount of the guaranteed maximum price. The bond must be conditioned to be void if the contractor and all subcontractors fully perform all terms, conditions, and provisions of the construction services contract and pay all bills or claims on account of labor and materials, including supplies used for machinery and equipment, performed, furnished, and used in the performance of the contract, including all demands of subcontractors. The requirement that bills and claims be paid must include the requirement that interest of the amount authorized under section 13-01.1-02 be paid on bills and claims not paid within ninety days. The bond is security for all bills, claims, and demands until fully paid, with preference to labor and material suppliers as to payment. The bond must run to the governing body, but any person having a lawful claim against the contractor may sue on the bond.
3. Each mechanical contractor and electrical contractor providing work on a public improvement project that utilizes the construction management at-risk delivery method shall provide the governing body with a separate bond for the contractor's portion of the public improvement.

**48-01.2-24. Public buildings and facilities - Statement of compliance with accessibility guidelines.** Each governing body shall require a statement from any person preparing the plans and specifications for a public building or facility that, in the professional judgment of that person, the plans and specifications are in conformance with the Americans with Disabilities Act accessibility guidelines for buildings and facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36 [28 CFR 36], subject to the exception stated in section 54-21.3-04.1.

**48-01.2-25. Authorization of expansion of public improvements by legislative assembly or budget section.** Notwithstanding any other provision of law, a state agency or institution may not significantly change or expand a public improvement beyond what has been approved by the legislative assembly unless the legislative assembly, or the budget section of the legislative council if the legislative assembly is not in session, approves the change or expansion of the project or any additional expenditure for the project. For the purposes of this section, a significant change or expansion includes the construction of an addition to a building, including skywalks or other type of enclosed walkway, or any other substantial increase in the area of the building, but does not include the construction of building entrances and stairwells.

**SECTION 15. AMENDMENT.** Section 48-05-12 of the North Dakota Century Code is amended and reenacted as follows:

**48-05-12. Competitive bidding and architect and engineering services.** Guaranteed energy savings contracts are not subject to the requirements of ~~chapters 48-01.1 and 48-02~~ chapter 48-01.2, which relate to competitive bidding, and are not subject to section 43-19.1-28.

**SECTION 16. AMENDMENT.** Section 57-40.2-14 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.2-14. Contractor's performance bonds for payment of use tax.** For the purposes of this section, the term "contractor" includes any person or group or combination of persons acting as a unit; "subcontractor" includes person or group or combination of persons acting as a unit, who undertakes to perform all or any part of work covered by the original contract entered into by the contractor, including the furnishing of any supplies, materials, equipment, or any other tangible personal property; "surety" means a bond or undertaking executed by a surety company authorized to do business in this state; and "surety company" means any person executing the surety.

Whenever any contractor or subcontractor enters into any contract for the erection of buildings or the alteration, improvement, or repair of real property in this state and the contractor or subcontractor furnishes surety for the faithful performance of such contract, there is hereby imposed the additional obligation upon the surety company to the state of North Dakota that said contractor or subcontractor shall promptly pay all use taxes which may accrue to the state of North Dakota under this chapter. In the case of a contractor and the contractor's surety company, this additional obligation shall include liability to pay to the commissioner on purchases made by either the contractor or the subcontractor all such use taxes which have not been paid to a retailer authorized or required to collect such taxes; and the contractor or the contractor's surety company may recover from the subcontractor the amount of any use taxes accruing with respect to purchases made by the subcontractor which the contractor or the surety company may be required to pay to the commissioner, or to withhold from the amount due the subcontractor under the subcontract an amount



equal to any use taxes accruing with respect to purchases of the subcontractor which have not been paid by the subcontractor to the commissioner or to a retailer authorized or required to collect such taxes. Such liability on the part of the surety company is limited to three percent of the amount of the contract price.

The surety company within sixty days after executing such surety shall send written notice of the same to the commissioner, which notice must give the names and addresses of the parties contracting with respect to the real property and the place where the contract is to be performed. After the completion of the contract and the acceptance of the improvement by the owner of the real property improved, the surety company shall give written notice of such completion and acceptance to the commissioner.

Six months after the completion of the contract and the acceptance of the improvement by the owner thereof, the additional obligation imposed upon the surety company ceases unless written notice, within such period of time, of unpaid use taxes, is given to the surety company by the commissioner.

This section does not modify or repeal any ~~of the provisions~~ provision of ~~chapters 48-01.4 and 48-02~~ chapter 48-01.2.

**SECTION 17. AMENDMENT.** Subsection 2 of section 61-02-04.1 of the North Dakota Century Code is amended and reenacted as follows:

2. Sections 12.1-13-02, 12.1-13-03, and ~~48-02-12~~ 48-01.2-08 do not apply to contracts in which a member of the commission is directly or indirectly interested if the requirements of subsection 1 have been met.

**SECTION 18. AMENDMENT.** Subsection 2 of section 61-02-23.2 of the North Dakota Century Code is amended and reenacted as follows:

2. May issue, when it determines that it would be advantageous to the state or that it is necessary in order to construct the outlet in a timely manner, a request for proposals to design and build the outlet. The request for proposals must require that each proposal submitted contain a single price that includes the cost to design and build the outlet. Neither chapter ~~48-01.4~~ 48-01.2 or 54-44.7, nor any other law requiring competitive bidding applies to the construction of the outlet if the commission determines to use the design and build procedure. The commission shall select the proposal that it determines is the most advantageous to the state.

**SECTION 19. AMENDMENT.** Section 61-07-09 of the North Dakota Century Code is amended and reenacted as follows:

**61-07-09. Advertising for bids.** After adopting a plan of irrigation works, the board shall secure bids as provided in ~~chapters 48-01.4 and 48-02~~ chapter 48-01.2. Contracts for the purchase of materials must be awarded to the lowest and best bidder. The person to whom a contract may be awarded shall furnish a bond with good and sufficient sureties, to be approved by the board, payable to such district for its use, in an amount at least equal to the contract price, conditioned for the faithful and complete performance of the contract. The work must be done under the direction and to the satisfaction of the engineer and must be approved by the board. This section does not apply in case of any contract between the district and the United States, or any department, bureau, or agency thereof, or with the state water commission.

**SECTION 20. AMENDMENT.** Section 61-12-25 of the North Dakota Century Code is amended and reenacted as follows:

**61-12-25. Notice of construction - Letting of contracts.** After the order establishing a project has been entered, the board of flood irrigation shall advertise bids in accordance with ~~chapters 48-01.4 and 48-02~~ chapter 48-01.2 for the construction of all work required, as shown by the plans and specifications on file.

**SECTION 21. AMENDMENT.** Section 61-16.1-14 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-14. Contracts for construction or maintenance of project.** If the cost of construction or maintenance of a project does not exceed the amount provided for construction of a public improvement under section ~~48-01.1-03 48-01.2-02~~, the work may be done on a day work basis or a contract may be let without being advertised. In cases where the cost of the construction or maintenance exceeds the amount provided for construction of a public improvement under section ~~48-01.1-03 48-01.2-02~~, the board must let a contract in accordance with ~~chapters 48-01.4 and 48-02~~ chapter 48-01.2.

**SECTION 22. AMENDMENT.** Section 61-21-25 of the North Dakota Century Code is amended and reenacted as follows:

**61-21-25. Letting of contracts for drains.** The board shall let contracts for the construction of the drain, culverts, bridges, and appurtenances thereto, or portions thereof in accordance with ~~chapters 48-01.4 and 48-02~~ chapter 48-01.2.

**SECTION 23. AMENDMENT.** Section 61-21-45 of the North Dakota Century Code is amended and reenacted as follows:

**61-21-45. Contracts for work of cleaning and repairing drains.** If the cost of any work of cleaning out or repairing any drain, or system of legal drains, if more than one cleaning or repair project is carried on under one contract, does not exceed the amount provided for construction of a public improvement under section ~~48-01.1-03 48-01.2-02~~ in any one year, the work may be done on a day work basis or a contract may be let without being advertised. When the cost of such work exceeds the amount provided for construction of a public improvement under section ~~48-01.1-03 48-01.2-02~~ in any one year, a contract must be let in accordance with ~~chapters 48-01.4 and 48-02~~ chapter 48-01.2. The competitive bid requirement is waived, upon the determination of the board that an emergency situation exists requiring the prompt repair of a project, and a contract may be made for the prompt repair of the project without seeking bids.

**SECTION 24. AMENDMENT.** Section 61-24.3-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-24.3-03.1. 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 does not apply to contracts that involve federal moneys where a preference would be contrary to federal laws or regulations, contracts covered under chapter ~~48-01-1~~ 48-01.2, or to architect, engineer, professional right of way, and land surveying services.

**SECTION 25. AMENDMENT.** Section 61-35-13 of the North Dakota Century Code is amended and reenacted as follows:

**61-35-13. Contracts for construction or maintenance of a project.** If the cost of construction or maintenance of a project does not exceed the amount provided for construction of a public improvement under section ~~48-01.1-03~~ 48-01.2-02, the work may be done on a day work basis or a contract may be let without being advertised. If the cost of the construction or maintenance exceeds the amount provided for construction of a public improvement under section ~~48-01.1-03~~ 48-01.2-02, the lowest and best bid must be accepted. The board must comply with the requirements of sections 61-35-88 through 61-35-103 when bidding a project.

The competitive bid requirement of this section may be waived if the board determines that an emergency exists requiring the prompt repair of a project and a contract may be made for the prompt repair of the project without seeking bids.

**SECTION 26. AMENDMENT.** Section 61-35-88 of the North Dakota Century Code is amended and reenacted as follows:

**61-35-88. Call for bids - Contents - Advertising.** Proposals for the work of making improvements provided for in this chapter that exceed the amount provided for construction of a public improvement under section ~~48-01.1-03~~ 48-01.2-02 must be advertised for by the board in the official newspaper of the county where the district office is located once each week for two consecutive weeks. The board may cause the work on two or more improvements to be combined in one advertisement and one contract awarded pursuant to that advertisement. The advertisement for bids must:

1. Specify the work to be done according to the plans and specifications on file in the office of the district;
2. Call for bids upon the basis of cash payment for the work;
3. State the time within which the bids will be received; and
4. State the time within which the work on the improvement is to be completed.

The board may require bidders to state also the rate of interest, not exceeding seven percent per annum, which the bonds to be received and accepted by the bidder at par in payment for the work are to bear.

**SECTION 27. AMENDMENT.** Subsection 2 of section 61-35-94 of the North Dakota Century Code is amended and reenacted as follows:

2. Cause the work described in the plans, specifications, and estimates to be done directly by the district by the employment of labor and the purchase of materials required, or in any other manner the board considers proper, and payment for the work may be provided through special assessments in the same manner as though the work had been performed under contract, provided this work amounts to no more than the amount provided for construction of a public improvement under section ~~48-01.1-03~~ 48-01.2-02; or

**SECTION 28. REPEAL.** Chapters 48-01.1 and 48-02 of the North Dakota Century Code are repealed.

Approved March 12, 2007

Filed March 13, 2007

# PUBLIC UTILITIES

## CHAPTER 404

### HOUSE BILL NO. 1142

(Representatives Headland, D. Johnson, Kaldor)  
(Senators Heitkamp, Klein, Nething)

## PSC TELECOMMUNICATIONS JURISDICTION

AN ACT to amend and reenact section 49-02-01.1 of the North Dakota Century Code, relating to the jurisdiction of the public service commission over telecommunications companies.

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

**SECTION 1. AMENDMENT.** Section 49-02-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**49-02-01.1. Jurisdiction of commission limited as to certain utilities.**

Nothing in this chapter or in chapter 49-21 authorizes 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, that is not operated for profit, that is operated as a nonprofit, cooperative, or mutual telecommunications company or is a telecommunications company having fewer than ~~eight~~ eighteen thousand local exchange subscribers. However, any telecommunications utility that is operated as a nonprofit, cooperative, or mutual telecommunications company or has fewer than ~~eight~~ eighteen thousand local exchange subscribers is subject to sections 49-21-01.4, 49-21-02.4, 49-21-23, 49-21-24, and 49-21-25, subsections 6 through 14 of section 49-21-01.7, and to sections 49-21-01.2, 49-21-01.3, 49-21-06, 49-21-07, 49-21-09, and 49-21-10, regarding rates, terms, and conditions of access services or connection between facilities and transfer of telecommunications between two or more telecommunications companies. Nothing in this section limits the authority of the commission granted under chapters 49-03 and 49-03.1 or sections 49-04-05 and 49-04-06.

Approved March 6, 2007

Filed March 7, 2007

**CHAPTER 405****HOUSE BILL NO. 1193**

(Representatives Wrangham, Kerzman, Nottestad)  
(Senators Cook, Klein, O'Connell)

**HYDROELECTRICITY AS RENEWABLE ENERGY**

AN ACT to amend and reenact section 49-02-25 of the North Dakota Century Code, relating to hydroelectricity as a renewable electricity and recycled energy source.

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

<sup>202</sup> **SECTION 1. AMENDMENT.** Section 49-02-25 of the North Dakota Century Code is amended and reenacted as follows:

**49-02-25. Renewable electricity and recycled energy defined.** As used in section 49-02-24, renewable electricity and recycled energy include electricity generated from facilities using the following sources:

1. Solar, using the sun as the source of energy for producing electricity.
2. Wind, using the wind as the source of energy for producing electricity.
3. Hydroelectric, using water as the source of energy for producing electricity.
4. Biomass, using agricultural crops and agricultural wastes and residues, wood and wood wastes and residues, animal wastes, and landfill gas as the fuel to produce electricity.
4. 5. Geothermal, using energy contained in heat that continuously flows outward from the earth as the source of energy to produce electricity.
5. 6. Hydrogen, provided that the hydrogen is generated from a source listed in this section.
6. 7. Recycled energy systems producing electricity from currently unused waste heat resulting from combustion or other processes into electricity and which do not use an additional combustion process. The term does not include any system whose primary purpose is the generation of electricity.

Approved March 5, 2007  
Filed March 6, 2007

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<sup>202</sup> Section 49-02-25 was also amended by section 2 of House Bill No. 1506, chapter 406.

**CHAPTER 406****HOUSE BILL NO. 1506**

(Representatives Monson, Dahl, S. Kelsh)

(Senator Erbele)

**RENEWABLE AND RECYCLED ENERGY**

AN ACT to establish a state renewable and recycled energy objective; to create and enact six new sections to chapter 49-02 of the North Dakota Century Code, relating to renewable and recycled energy; and to amend and reenact sections 49-02-25 and 49-02-26 of the North Dakota Century Code, relating to electricity produced from hydroelectric sources as renewable electricity and recycled energy.

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

**SECTION 1. State renewable and recycled energy objective.** The legislative assembly establishes a state renewable and recycled energy objective that ten percent of all electricity sold at retail within the state by the year 2015 be obtained from renewable energy and recycled energy sources. The objective must be measured by qualifying megawatt hours delivered at retail or by certificates representing credits purchased and retired to offset nonqualifying retail sales. This objective is voluntary and there is no penalty or sanction for a retail provider of electricity that fails to meet this objective. The objective applies to all retail providers of electricity in the state, regardless of the ownership status of the electricity retailer. Municipal and cooperative utilities that receive wholesale electricity through a municipal power agency or generation and transmission cooperative may aggregate their renewable and recycled energy objective resources to meet this objective.

<sup>203</sup> **SECTION 2. AMENDMENT.** Section 49-02-25 of the North Dakota Century Code is amended and reenacted as follows:

**49-02-25. Renewable electricity and recycled energy defined.** As used in section 49-02-24, renewable electricity and recycled energy include electricity generated from facilities using the following sources:

1. Solar, using the sun as the source of energy for producing electricity.
2. Wind, using the wind as the source of energy for producing electricity.
3. Biomass, using agricultural crops and agricultural wastes and residues, wood and wood wastes and residues, animal wastes, and landfill gas as the fuel to produce electricity.
4. Hydroelectric, that uses water as the source of energy to produce electricity.

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<sup>203</sup> Section 49-02-25 was also amended by section 1 of House Bill No. 1193, chapter 405.

5. Geothermal, using energy contained in heat that continuously flows outward from the earth as the source of energy to produce electricity.
- ~~5-~~ 6. Hydrogen, provided that the hydrogen is generated from a source listed in this section.
- ~~6-~~ 7. Recycled energy systems producing electricity from currently unused waste heat resulting from combustion or other processes into electricity and which do not use an additional combustion process. The term does not include any system whose primary purpose is the generation of electricity.

**SECTION 3. AMENDMENT.** Section 49-02-26 of the North Dakota Century Code is amended and reenacted as follows:

**49-02-26. Qualifying for renewable electricity and recycled energy credits - Exception for certain hydroelectric facilities.** ~~For~~ Except as otherwise provided in this section, for purposes of qualifying for renewable electricity and recycled energy credits, electricity must be generated from a source identified in section 49-02-25. For electricity generated from hydroelectric facilities, the hydroelectric facility must have an inservice date of January 1, 2007, or later, or be new hydroelectric generation obtained from repowering or efficiency improvements to hydroelectric facilities existing on the effective date of this Act.

**SECTION 4.** A new section to chapter 49-02 of the North Dakota Century Code is created and enacted as follows:

**Qualifying for renewable electricity and recycled energy objective.** For purposes of qualifying for the renewable electricity and recycled energy objective contained in section 1 of this Act, electricity, except for electricity generated from a hydroelectric facility with an inservice date before January 1, 2007, and electricity that is not obtained from repowering or efficiency improvements to a hydropower facility existing on the effective date of this Act, regardless of the source's inservice date, qualifies for meeting the statewide objective provided that the source meets the requirements of North Dakota public service commission's rules for tracking, recording, and verifying renewable energy certificates.

**SECTION 5.** A new section to chapter 49-02 of the North Dakota Century Code is created and enacted as follows:

**Application of electricity generated from existing hydroelectric facilities in calculating the renewable objective.** For purposes of calculating the amount of electricity from renewable energy and recycled energy sources needed to meet the renewable and recycled energy objective, a retail provider may deduct from its baseline of total retail sales the proportion of electricity obtained from hydroelectric facilities with an inservice date before January 1, 2007.

**SECTION 6.** A new section to chapter 49-02 of the North Dakota Century Code is created and enacted as follows:

**Purchase and retirement of renewable energy and recycled energy certificates to meet the objective.** A portion or all of the renewable energy and recycled energy objective may be met by the purchase and retirement of renewable energy and recycled energy certificates representing credits from qualified sources and facilities as defined in section 49-02-26 and section 5 of this Act. Renewable



energy and recycled energy certificates do not need to be acquired from an in-state facility.

**SECTION 7.** A new section to chapter 49-02 of the North Dakota Century Code is created and enacted as follows:

**Use of renewable and recycled energy - Economic evaluation.** Before using new renewable and recycled energy after August 1, 2007, to meet the objective, the retail provider or its generation supplier shall make an economic evaluation to determine if the use of new renewable and recycled energy is cost-effective considering other electricity alternatives. After evaluating the renewable and recycled energy objective and economic evaluation, the retail provider or its generation supplier may use the electricity alternative that best meets its resource or customer needs.

**SECTION 8.** A new section to chapter 49-02 of the North Dakota Century Code is created and enacted as follows:

**Verification of generation and of purchase of renewable energy and recycled energy certificates.** Electricity generation applied to the renewable energy and recycled energy objective, as well as certificate purchases and certificate retirements, must be independently verified through a third-party credit tracking system selected by the public service commission.

**SECTION 9.** A new section to chapter 49-02 of the North Dakota Century Code is created and enacted as follows:

**Public reporting on progress toward meeting the renewable energy and recycled energy objective.** Commencing on June 30, 2009, retail providers shall report annually on the provider's previous calendar year's energy sales. This report must include information regarding qualifying electricity delivered and renewable energy and recycled energy certificates purchased and retired as a percentage of annual retail sales and a brief narrative report that describes steps taken to meet the objective over time and identifies any challenges or barriers encountered in meeting the objective. The last annual report must be made on June 30, 2016. Retail providers shall report to the public service commission, which shall make data and narrative reports publicly available and accessible electronically on the internet. Distribution cooperatives may aggregate their reporting through generation and transmission cooperatives and municipal utilities may aggregate their reporting through a municipal power agency.

Approved March 23, 2007

Filed March 23, 2007

**CHAPTER 407****HOUSE BILL NO. 1221**

(Representatives Keiser, Delmore, Vigesaa)  
(Senators Heitkamp, Klein, Wanzek)

**RATE ADJUSTMENT FOR ENVIRONMENTAL  
MANDATES**

AN ACT to create and enact a new section to chapter 49-05 of the North Dakota Century Code, relating to public utility rate adjustments for recovery of costs resulting from federal environmental mandates on existing electricity generating stations.

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

**SECTION 1.** A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

**Rate adjustment - Federal environmental mandate costs.**

1. The commission may approve, reject, or modify a tariff filed under section 49-05-06, which provides for an adjustment of rates to recover jurisdictional capital costs and associated operating expenses incurred by a public utility to comply with federal environmental mandates on existing electricity generating stations. For purposes of this section, federal environmental mandates are limited to any requirements under the Clean Air Act, the Clean Water Act, or any other federal law or rule designed to protect the environment. Associated operating expenses are costs incurred by the public utility to comply with the environmental mandate. The tariff must:
  - a. Allow the public utility to recover on a timely basis its investment in capital costs and associated operating expenses incurred to meet federal environmental mandates not reflected in the utility's general rate schedule.
  - b. Allow a return on the public utility's investment made to meet federal environmental mandates at the level approved in the utility's most recent general rate case.
  - c. Provide a current return on construction work in progress to meet federal environmental mandates provided the cost recovery from retail customers of the allowance for funds used during construction is not sought through any other means.
  - d. Terminate cost recovery after the public utility's costs and expenses to meet federal environmental mandates have been recovered fully or have been reflected in the utility's general rate tariffs.
2. Rate adjustments filed under the tariff must be accompanied by:

- a. A description and quantification of the costs and expenses incurred by the public utility to meet federal environmental mandates which are subject to recovery;
  - b. A schedule for implementation of the applicable projects; and
  - c. Calculations to establish that the rate adjustment is consistent with the terms of the tariff.
3. Upon receipt of a rate adjustment filed under the tariff, the commission shall approve the rate adjustment to become effective unless, after notice and opportunity for hearing and comment, the commission determines the rate adjustment does not comply with the tariff or the incurred costs and expenses to meet federal environmental mandates are not reasonable and prudent. The commission may order the expenses of investigating rate adjustments to meet federal environmental mandates under this section be paid by the public utility in accordance with section 49-02-02. The public utility has the burden of proving that the rate adjustment complies with the tariff and that the costs and expenses incurred to meet federal environmental mandates are reasonable and prudent.

Approved March 13, 2007

Filed March 14, 2007

**CHAPTER 408****SENATE BILL NO. 2031**

(Legislative Council)  
(Electric Industry Competition Committee)

**RATE ADJUSTMENTS FOR TRANSMISSION  
FACILITIES**

AN ACT to create and enact a new section to chapter 49-05 of the North Dakota Century Code, relating to public utility rate adjustments for recovery of transmission facility costs.

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

**SECTION 1.** A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

**Rate adjustment - Transmission facility costs.**

1. The commission may approve, reject, or modify a tariff filed under section 49-05-06 which provides for an adjustment of rates to recover jurisdictional capital and operating costs incurred by a public utility for new or modified electric transmission facilities. For purposes of this section, an electric transmission facility includes an electric transmission line as defined in chapter 49-21.1 and other transmission line equipment, including substations, transformers, and other equipment constructed to improve the power delivery capability or reliability of the electric transmission system; and operating costs include federally regulated costs charged to or incurred by the public utility to increase regional transmission capacity or reliability. The tariff must:
  - a. Allow the public utility to recover on a timely basis its investment and associated costs for new or modified electric transmission facilities not reflected in the utility's general rate schedule;
  - b. Allow a return on the public utility's investment made for new or modified electric transmission facilities at the level approved in the utility's most recent general rate case;
  - c. Provide a current return on construction work in progress for new or modified electric transmission facilities, provided the cost recovery from retail customers of the allowance for funds used during construction is not sought through any other means; and
  - d. Terminate cost recovery after the public utility's costs for new or modified electric transmission facilities have been recovered fully or have been reflected in the utility's general rate tariffs.
2. Rate adjustments filed under the tariff must be accompanied by:

- a. A description and quantification of the costs incurred by the public utility for new or modified electric transmission facilities which are subject to recovery;
  - b. A schedule for implementation of the applicable transmission facility projects; and
  - c. Calculations to establish that the rate adjustment is consistent with the terms of the tariff.
3. Upon receipt of a rate adjustment filed under the tariff, the commission shall approve the rate adjustment to become effective unless, after notice and opportunity for hearing and comment, the commission determines the rate adjustment does not comply with the tariff or the incurred costs for new or modified electric transmission facilities are not reasonable and prudent. The commission may order the public utility to pay the expenses of investigating rate adjustments for recovery of transmission facility costs under this section in accordance with section 49-02-02.

Approved March 9, 2007  
Filed March 12, 2007

**CHAPTER 409****SENATE BILL NO. 2188**

(Senators Fischer, Cook, Robinson)  
(Representatives Haas, R. Kelsch, Wolf)

**RAILROAD ACCIDENT REPORTS AND STUDY**

AN ACT to create and enact a new section to chapter 49-10.1 of the North Dakota Century Code, relating to railroad accident reports; and to provide for a legislative council study of risk assessments and railroad safety.

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

**SECTION 1.** A new section to chapter 49-10.1 of the North Dakota Century Code is created and enacted as follows:

**Accident report.** A railroad corporation shall provide immediate notification to the department of emergency services of an accidental release of a hazardous material.

**SECTION 2. LEGISLATIVE COUNCIL STUDY - RISK ASSESSMENTS AND RAILROAD SAFETY.** During the 2007-08 interim, the legislative council shall study risk assessments for railroad facilities, the handling of hazardous cargo by railroads, and the ability of railroads to respond to potential accidents and emergencies, including sabotage, terrorism, and other crimes. This study must include an evaluation of whether whistleblower protection would provide a desirable response in employees to report dangerous conditions or violations of law relating to hazards, emergencies, and accidents. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Approved April 26, 2007  
Filed April 27, 2007

**CHAPTER 410****SENATE BILL NO. 2368**

(Senator Potter)

**RAILROAD RIGHT OF WAY CHOICE OF LAWS VOID**

AN ACT to create and enact a new section to chapter 49-16 of the North Dakota Century Code, relating to a choice-of-laws clause in an indemnification provision of a railroad right of way agreement.

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

**SECTION 1.** A new section to chapter 49-16 of the North Dakota Century Code is created and enacted as follows:

**Choice-of-laws clause void.** To the extent a provision of any lease, license, or other agreement relating to the use or occupancy of railroad right of way or other adjoining property provides the indemnification provisions of section 49-16-01.1 do not apply, or another provision applies, the provision is void.

Approved April 26, 2007

Filed April 27, 2007

**CHAPTER 411****HOUSE BILL NO. 1143**

(Representative Headland)  
(Senator Wanzek)

**PSC TELECOMMUNICATIONS POWERS**

AN ACT to create and enact a new subsection to section 49-21-01.7 of the North Dakota Century Code, relating to the powers of the public service commission with respect to rural telephone companies under the federal Telecommunications Act of 1996.

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

**SECTION 1.** A new subsection to section 49-21-01.7 of the North Dakota Century Code is created and enacted as follows:

Grant suspensions or modifications under section 251(f) of the federal Act.

Approved March 7, 2007  
Filed March 8, 2007



**CHAPTER 412****HOUSE BILL NO. 1315**

(Representatives Brandenburg, Damschen, Headland, Klein)  
(Senators Wanzek, Wardner)

**ELECTRICAL GENERATION AND TRANSMISSION  
SAFETY**

AN ACT to create and enact a new section to chapter 49-22 of the North Dakota Century Code, relating to electrical generation and transmission safety.

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

**SECTION 1.** A new section to chapter 49-22 of the North Dakota Century Code is created and enacted as follows:

**Safety.** Every utility that owns or operates electric generation of any size for the primary purpose of resale shall comply with the standards of the National Electrical Safety Code in effect at the time of construction of the generation.

Approved April 11, 2007  
Filed April 13, 2007

**CHAPTER 413****HOUSE BILL NO. 1127**

(Government and Veterans Affairs Committee)  
(At the request of the Industrial Commission)

**TRANSMISSION AUTHORITY RECORDS AND  
REPORTING**

AN ACT to create and enact a new section to chapter 49-24 of the North Dakota Century Code, relating to confidentiality of transmission authority information; and to amend and reenact subsection 12 of section 49-24-05, section 49-24-13, subsection 3 of section 54-17.5-04, section 54-17.5-06, and subsection 5 of section 54-44.4-02 of the North Dakota Century Code, relating to powers of the transmission authority, procurement and borrowing by the industrial commission, reporting requirements, and confidential records.

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

**SECTION 1. AMENDMENT.** Subsection 12 of section 49-24-05 of the North Dakota Century Code is amended and reenacted as follows:

12. Consult with the public service commission, regional organizations, and any other relevant state or federal authority or persons as necessary and establish reasonable fees, rates, tariffs, or other charges for transmission facilities and all services rendered by the authority;

**SECTION 2. AMENDMENT.** Section 49-24-13 of the North Dakota Century Code is amended and reenacted as follows:

**49-24-13. Biennial report to legislative council Reporting requirements.** The authority shall deliver a written report on its activities to the legislative council each biennium. Notwithstanding chapter 54-60.1, the authority shall provide an annual report to the industrial commission detailing activities and expenditures incurred during the preceding year.

**SECTION 3.** A new section to chapter 49-24 of the North Dakota Century Code is created and enacted as follows:

**Access to authority records - Confidentiality.**

1. Materials and data submitted to, or made or received by, the authority, to the extent that the authority determines the materials or data consist of trade secrets or commercial, financial, or proprietary information of individuals or entities applying to or contracting with the authority or receiving authority services under this chapter are subject to section 44-04-18.4.
2. A person or entity must file a request with the authority to have material designated as confidential under subsection 1. A request to have material designated as confidential is exempt as defined in section

44-04-17.1. The request must contain any information required by the authority and must include at least:

- a. A general description of the nature of the information sought to be protected.
  - b. An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons.
  - c. An explanation of why the information is not readily ascertainable by proper means by other persons.
  - d. A general description of any person or entity that may obtain economic value from disclosure or use of the information and how the person or entity may obtain this value.
  - e. A description of the efforts used to maintain the secrecy of the information.
3. The information submitted under subsection 2 is confidential. The authority shall examine the request and determine whether the information is relevant to the matter at hand and is a trade secret under the definition in section 47-25.1-01 or 44-04-18.4. If the authority determines the information is either not relevant or not a trade secret, the authority shall notify the requester and the requester may ask for the return of the information and request within ten days of the notice. If no return is sought, the information and request are a public record.

**SECTION 4. AMENDMENT.** Subsection 3 of section 54-17.5-04 of the North Dakota Century Code is amended and reenacted as follows:

3. To ~~borrow money and~~ issue evidences of indebtedness as ~~provided~~ authorized in this chapter and to borrow money in an amount not to exceed six million dollars from the Bank of North Dakota for a period not to exceed five years on the terms and conditions as the Bank of North Dakota and the industrial commission may approve without the necessity of establishing or maintaining any reserve fund as otherwise required by section 54-17.5-05.

**SECTION 5. AMENDMENT.** Section 54-17.5-06 of the North Dakota Century Code is amended and reenacted as follows:

**54-17.5-06. Access to commission records.**

1. Materials and data submitted to, or made or received by, the commission, to the extent that the commission determines the materials or data consist of trade secrets or commercial, financial, or proprietary information of individuals or entities applying to or contracting with the commission or receiving commission services under this chapter, ~~are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota, and~~ are subject to section 44-04-18.4.
2. A person or entity must file a request with the commission to have material designated as confidential under subsection 1. A request to

have material designated as confidential is exempt as defined in section 44-04-17.1. The request must contain any information required by the commission, and must include at least the following:

- a. A general description of the nature of the information sought to be protected.
  - b. An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons.
  - c. An explanation of why the information is not readily ascertainable by proper means by other persons.
  - d. A general description of any person or entity that may obtain economic value from disclosure or use of the information, and how the person or entity may obtain this value.
  - e. A description of the efforts used to maintain the secrecy of the information.
3. Any ~~request~~ information submitted under subsection 2 is confidential. The commission shall examine the request and determine whether the information is relevant to the matter at hand and is a trade secret under the definition in section 47-25.1-01 or 44-04-18.4. If the commission determines the information is either not relevant or not a trade secret, the commission shall notify the requester and the requester may ask for the return of the information and request within ten days of the notice. If no return is sought, the information and request are a public record.
4. The names or identities of independent technical reviewers on any project or program and the names of individual lignite council members making recommendations are confidential; ~~and may not be disclosed by the commission, and are not public records subject to section 44-04-18 or section 6 of article XI of the Constitution of North Dakota.~~

<sup>204</sup> **SECTION 6. AMENDMENT.** Subsection 5 of section 54-44.4-02 of the North Dakota Century Code is amended and reenacted as follows:

5. Procurements through a contract or other instrument executed by the industrial commission under ~~chapter~~ chapters 54-17.5 and 49-24.

Approved April 24, 2007  
Filed April 25, 2007

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<sup>204</sup> Section 54-44.4-02 was also amended by section 6 of House Bill No. 1060, chapter 314, section 3 of House Bill No. 1128, chapter 464, and section 7 of Senate Bill No. 2019, chapter 45.

# PUBLIC WELFARE

## CHAPTER 414

### SENATE BILL NO. 2312

(Senators Krauter, Erbele, J. Lee)  
(Representatives Kerzman, Koppelman, Price)

## ALTERNATIVES-TO-ABORTION SERVICES AND REPORT

AN ACT to amend and reenact section 50-06-26 of the North Dakota Century Code, relating to the alternatives-to-abortion services program; to provide for reports to the legislative council; and to provide an appropriation.

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

**SECTION 1. AMENDMENT.** Section 50-06-26 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-26. (~~Effective through June 30, 2007~~) Alternatives-to-abortion services program.** ~~Before January 1, 2006, the~~ The department of human services shall ~~establish and implement a procedure to facilitate funding~~ disburse funds available through title IV-A of the Social Security Act [42 U.S.C. 601 et seq.] to nongovernmental entities that provide alternatives-to-abortion services and expend funds to inform the public about this program. The services must be outcome-based with positive outcome-based results. For purposes of this section, "alternatives-to-abortion services" are those services that promote childbirth instead of abortion by providing information, counseling, and support services that assist pregnant women or women who believe they may be pregnant to choose childbirth and to make informed decisions regarding the choice of adoption or parenting with respect to their children.

**SECTION 2. REPORT TO LEGISLATIVE COUNCIL.** During the 2007-08 interim, the department of human services shall make annual reports to the legislative council regarding the status of the alternatives-to-abortion services program.

**SECTION 3. APPROPRIATION.** There is appropriated out of any moneys from special funds derived from federal funds and other income from the temporary assistance for needy families program, the sum of \$400,000, or so much of the sum as may be necessary, to the department of human services for the purpose of implementing the alternatives-to-abortion services program, for the biennium beginning July 1, 2007, and ending June 30, 2009.

Approved April 23, 2007  
Filed April 24, 2007

**CHAPTER 415****SENATE BILL NO. 2070**

(Human Services Committee)

(At the request of the Department of Human Services)

**AGING AND DISABILITY RESOURCE CENTER  
FUNDING**

AN ACT to provide for application by the department of human services for federal funds for the implementation of an aging and disability resource center; to provide an appropriation; and to declare an emergency.

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

**SECTION 1. Application for aging and disability resource center funding.** No later than December 31, 2007, the department of human services shall seek federal funds for the planning and implementation of an aging and disability resource center for the state. The resource center will be a single point of information program at the community level which will help people make informed decisions about the full range of long-term care service and support options, including both institutional and home and community-based care, and which will provide unbiased information and assistance to individuals needing either public or private resources, to professionals seeking assistance on behalf of their clients, and to individuals planning for their future long-term care needs. Upon receipt of federal funds, the department of human services may establish the aging and disability resource center or it may request bids and award a contract for the provision of this service. The duties of the aging and disability resource center must include all duties required to receive federal funds, including providing information about the full range of long-term care service and support options available in the state to assure that consumers may make informed decisions about their care. The resource center must be free from a conflict of interest which would inappropriately influence or bias the actions of a contractor, staff member, board member, or volunteer of the resource center to limit the information given to a consumer to steer the consumer to services that may also be provided by the resource center.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$40,000, or so much of the sum as may be necessary, and from special funds derived from federal funds, the sum of \$800,000, or so much of the sum as may be necessary to the department of human services for the purpose of establishing or contracting for the provision of an aging and disability resource center, for the period beginning with the effective date of this Act and ending June 30, 2009. The department may use the funds appropriated from the general fund only if the department receives federal funds for an aging and disability resource center as described in section 1 of this Act. Any general fund amounts not used for the period beginning with the effective date of this Act and ending June 30, 2009, may not be spent.

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

Approved April 9, 2007  
Filed April 10, 2007

**CHAPTER 416****SENATE BILL NO. 2136**

(Judiciary Committee)

(At the request of the Department of Human Services)

**SEXUALLY DANGEROUS INDIVIDUAL COMMITMENT AGREEMENT**

AN ACT to provide for an agreement between the department of human services and the department of corrections and rehabilitation; and to provide for the department of human services to report to the legislative council regarding individuals committed to the department's care.

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

**SECTION 1. Interagency agreement between the department of human services and the department of corrections and rehabilitation.** The executive director of the department of human services and the director of the department of corrections and rehabilitation shall enter an interagency agreement effective August 1, 2007. The agreement must provide that the department of corrections and rehabilitation shall train, consult, and assist the department of human services with the provision and enforcement of safety and security procedures at state-owned facilities for all individuals placed at those facilities for evaluation or civil commitment and treatment under chapter 25-03.3 and for all staff, visitors, and volunteers at those facilities. The interagency agreement must provide that the executive director of the department of human services shall continue to be responsible for the custody and care of the individuals placed at those facilities for evaluation or civil commitment and treatment under chapter 25-03.3, including responsibility for all assessments, evaluations, and treatment required under chapter 25-03.3, the provision of all necessary staffing, including maintenance staff, and the provision of all daily care and health care.

**SECTION 2. Report to legislative council - Individuals committed to state hospital.** Before March first of each even-numbered year, the department of human services shall report to the legislative council on services provided by the department of corrections and rehabilitation relating to individuals at the state hospital who have been committed to the care and custody of the executive director of the department of human services.

Approved April 9, 2007  
Filed April 10, 2007



**CHAPTER 417****SENATE BILL NO. 2205**

(Senators Fischer, J. Lee, Mathern)  
(Representatives Hawken, Price, Weisz)

**CHILD SUPPORT ENFORCEMENT**

AN ACT to create and enact a new section to chapter 50-09 and a new subdivision to subsection 3 of section 57-15-01.1 of the North Dakota Century Code, relating to employment of special assistant attorneys general and to property tax reductions; to amend and reenact sections 11-23-01, 14-09-09.10, and 35-34-01, subsection 3 of section 50-01.2-00.1, sections 50-03-10 and 50-09-01, subsection 16 of section 50-09-02, and sections 50-09-03, 50-09-08, 50-09-33, 50-24.1-03.1, and 50-24.1-03.2 of the North Dakota Century Code, relating to state administration of the child support enforcement program; to repeal section 50-09-34 of the North Dakota Century Code, relating to administration of child support enforcement activities; to provide for a transfer of employees and equipment; to provide for payment and transfer of unused leave; to provide for a transfer of budgeted funds and unexpended child support incentive funds; to provide for a legislative council study; to provide an appropriation; to provide a continuing appropriation; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 11-23-01 of the North Dakota Century Code is amended and reenacted as follows:

**11-23-01. Officers required to furnish commissioners with departmental budget.**

1. Every officer in charge of any institution, office, or undertaking supported wholly or in part by the county shall file with the board of county commissioners a departmental budget that is prescribed by the state auditor. The departmental budget must include an itemized statement of the estimated amount of money that will be required for the maintenance, operation, or improvement of the institution, office, or undertaking for the ensuing year. The board of county commissioners may require additional information to clarify the departmental budget.
2. The departmental budget submitted by the county social service board in 2007 must identify the reduction in county funding derived from transfer of administration of the child support enforcement program from the county social service board to the department of human services on July 1, 2007. The amount reported must equal the full amount budgeted for administration of the child support enforcement program in the budget submitted by the county social service board and approved by the board of county commissioners in 2006. The budget must include a recommendation of how that reduction in county funding responsibility will be passed on to the property taxpayers of the county.

<sup>205</sup> **SECTION 2. AMENDMENT.** Section 14-09-09.10 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-09.10. Definitions.** For the purposes of this chapter, unless the context or subject matter otherwise requires:

1. "Arrears registry" means the registry maintained under section 50-09-02.7.
2. "Business day" means every day that is not a Saturday or legal holiday.
3. "Child support" means payments for the support of children and combined payments for the support of children and spouses or former spouses, however denominated, if the payment is required by the order of a court or other governmental agency having authority to issue such orders.
4. "Child support agency" means the ~~county social service board, any combination of county social service boards, or any entity created by a county social service board or any combination of county social service boards,~~ department of human services in execution of ~~the county social service board's~~ its duties under ~~subsection 5 of section 50-09-03 pursuant to the state plan submitted under chapter 50-09 in conformance with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.].~~
5. "Delinquent" means a situation which occurs on the first working day after the day upon which a child support payment was identified as due and unpaid, and the total amount of unpaid child support is at least equal to the amount of child support payable in one month.
6. "Disposable income" means gross income less deductions required by law for taxes and social security.
7. "Employer" means income payer.
8. "Health insurance" includes fees for service, health maintenance organization, preferred provider organization, comprehensive health association plan, accident and health insurance policies, group health plans as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 [Pub. L. 99-272; 100 Stat. 281; 29 U.S.C. 1167(1)], and other types of coverage under which major medical coverage may be provided in a policy, plan, or contract which may legally be sold or provided in this state.
9. "Income" means any form of payment, regardless of source, owed to an obligor, including any earned, unearned, taxable or nontaxable income, workforce safety and insurance benefits, disability benefits, unemployment compensation benefits, annuity and retirement benefits, but excluding public assistance benefits administered under state law.

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<sup>205</sup> Section 14-09-09.10 was also amended by section 6 of Senate Bill No. 2336, chapter 149.

10. "Income payer" means any person, partnership, firm, corporation, limited liability company, association, political subdivision, or department or agency of the state or federal government owing income to an obligor and includes an obligor if the obligor is self-employed.
11. "Monthly support obligation" means an amount of child support ordered by a court or administrative tribunal in a proceeding to establish or modify a child support obligation, including amounts that are deferred for payment at a later date. The term is defined without regard to any amount of child support that an obligor is required to pay to avoid being held in contempt of court. If an amount of past-due support has been ordered as a lump sum rather than determined on a monthly basis, "monthly support obligation" means one hundred sixty-eight dollars.
12. "Obligee" means a person, including a state or political subdivision, to whom a duty of support is owed.
13. "Obligor" means any person owing a duty of support.
14. "Past-due support" means child support that is not paid by the earlier of:
  - a. The date a court order or an order of an administrative process established under state law requires payment to be made; or
  - b. The last day of the month or other period the payment was intended to cover.
15. "Payday" means the day upon which the income payer pays or otherwise credits the obligor.
- ~~16. "Public authority" means the department of human services in execution of its duties pursuant to the state plan submitted under chapter 50-09 in conformance with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2354; 42 U.S.C. 654 et seq.].~~
- ~~17. "System implementation date" means the date the public authority certifies to the secretary of state and the legislative council that the statewide automated data processing system, established under section 50-09-02.1, is operating.~~

**SECTION 3. AMENDMENT.** Section 35-34-01 of the North Dakota Century Code is amended and reenacted as follows:

**35-34-01. Definitions.** For purposes of this chapter:

1. "Account" has the meaning provided in section 50-09-01.
2. "Child support" has the meaning provided in section 14-09-09.10.
3. "Child support agency" has the meaning provided in section 14-09-09.10.
4. "Financial institution" has the meaning provided in section 50-09-01.
4. 5. "Obligee" has the meaning provided in section 14-09-09.10.

- ~~5-~~ 6. "Obligor" has the meaning provided in section 14-09-09.10.
- ~~6-~~ 7. "Past-due support" has the meaning provided in section 14-09-09.10.
- ~~7-~~ "Public authority" has the meaning provided in section 14-09-09.10.
- 8. "Vehicle" has the meaning provided in section 39-01-01.
- 9. "Vessel" has the meaning provided in section 20.1-01-02.

**SECTION 4. AMENDMENT.** Subsection 3 of section 50-01.2-00.1 of the North Dakota Century Code is amended and reenacted as follows:

- 3. "Locally administered economic assistance programs" means those primary economic assistance programs that need to be accessible to all citizens of the state through a county social service office and include:
  - a. Temporary assistance for needy families;
  - b. ~~Child support enforcement programs;~~
  - ~~e-~~ ~~Programs established under section 50-06-01.8;~~
  - ~~e-~~ c. Employment and training programs;
  - ~~e-~~ c. Child care assistance programs;
  - f. d. Medical assistance, including early periodic screening, diagnosis, and treatment;
  - ~~g-~~ e. Food stamp programs, including employment and training programs;
  - ~~h-~~ f. Refugee assistance programs;
  - ~~i-~~ g. Basic care services;
  - ~~j-~~ h. Energy assistance programs; and
  - ~~k-~~ i. Information and referral.

**SECTION 5. AMENDMENT.** Section 50-03-10 of the North Dakota Century Code is amended and reenacted as follows:

**50-03-10. County commissions to make recommendations.** Before August first of each year, the boards of county commissioners of the counties shall make a collective recommendation to the department concerning the distribution between counties, of the social service block grant funds and the general fund equivalents of social service block grant funds available to the department for distribution to county social service boards. The department shall consider the recommendation of the county commissioners in determining the distribution to the county social service boards, in the following calendar year, of the social service block grant funds and the general fund equivalents of social service block grant funds available to the department for that purpose. ~~The department shall distribute child support incentive funds according to a formula that promotes performance and consistency in child support enforcement activities throughout the state.~~

**SECTION 6. AMENDMENT.** Section 50-09-01 of the North Dakota Century Code is amended and reenacted as follows:

**50-09-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Account" means a demand deposit account, checking or negotiable withdrawal order account, share account, share draft account, savings account, time deposit account, securities account, money market mutual fund account, or any other account or arrangement that reflects an owner's share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, to the extent the owner is permitted to redeem the share or interest by an order for payment to a third party.
2. "Assistance" means money payments with respect to, or goods and services provided for dependent children, including payments for the care of unmarried mothers or fathers and their infants.
3. "Child support" has the meaning provided in section 14-09-09.10.
4. ~~"Child support agency" has the meaning provided in section 14-09-09.10.~~
5. "County agency" means the county social service board in each of the counties of the state.
6. ~~5.~~ "Dependent child" means any needy child who is described in a state plan for aid and services to needy families submitted pursuant to title IV-A.
7. ~~6.~~ "Financial institution" means:
  - a. A depository institution, as defined in section 3(c) of the Federal Deposit Insurance Act [12 U.S.C. 1813(c)];
  - b. An institution-affiliated party, as defined in section 3(u) of the Federal Deposit Insurance Act [12 U.S.C. 1813(u)];
  - c. Any federal credit union or state credit union, as defined in section 101 of the Federal Credit Union Act [12 U.S.C. 1752], including an institution-affiliated party of such a credit union, as defined in section 206(r) of the Federal Credit Union Act [12 U.S.C. 1786(r)]; and
  - d. Any benefit association, insurance company, safe deposit company, securities intermediary, money market mutual fund, or similar entity authorized to do business in the state.
8. ~~7.~~ "Obligor" has the meaning provided in section 14-09-09.10.
9. ~~8.~~ "Past-due support" has the meaning provided in section 14-09-09.10.
10. ~~9.~~ "Secretary" means the secretary of the United States department of health and human services.

- 44- 10. "Securities account" has the meaning provided in section 41-08-41.
- 42- 11. "Securities intermediary" has the meaning provided in section 41-08-02, but does not include a clearing corporation.
- 43- 12. "State agency" means the North Dakota department of human services.
- 44- 13. "Title IV-A" means title IV-A of the Social Security Act, as adopted by title I of Pub. L. 104-193 [110 Stat. 2110 et seq.; 42 U.S.C. 601 et seq.].
- 45- 14. "Title IV-B" means title IV-B of the Social Security Act [Pub. L. 90-248, title II, sec. 240(c); 81 Stat. 911; 42 U.S.C. 620 et seq.], as amended.
- 46- 15. "Title IV-D" means title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.].
- 47- 16. "Title IV-E" means title IV-E of the Social Security Act [Pub. L. 96-272, title I, sec. 101(a)(1); 94 Stat. 501; 42 U.S.C. 670 et seq.], as amended.
- 48- 17. "Work activity" means any activity permitted or required to be treated as work for purposes of calculating a work participation rate.

**SECTION 7. AMENDMENT.** Subsection 16 of section 50-09-02 of the North Dakota Century Code is amended and reenacted as follows:

16. Act as the official agency of the state in the administration of the child support enforcement program and medical support enforcement program in conformity with title IV-D ~~and to direct and supervise county administration of that program.~~ In administering the child support enforcement and medical support enforcement programs, the state agency may contract with any public or private agency or person to discharge the state agency's duties and must maintain an office in each of the eight planning regions of the state.

**SECTION 8. AMENDMENT.** Section 50-09-03 of the North Dakota Century Code is amended and reenacted as follows:

**50-09-03. Duties of county agency.** In the administration of assistance under this chapter, a county agency shall:

1. Administer the temporary assistance for needy families program in its county, subject to the rules of the state agency.
2. Report to the state agency at such times and in such manner and form as the state agency, from time to time, may direct.
3. Submit annually to the board of county commissioners of each county a budget containing an estimate and supporting data, setting forth the amount of money needed to carry out the provisions of this chapter.
4. Cooperate with juvenile courts and licensed children's agencies.
5. ~~Administer the child support enforcement program under the direction and supervision of the state agency in conformity with title IV-D. In administering the program, the county agency shall have the authority to~~

~~contract with any public or private agency or person to discharge their child support enforcement duties.~~

- ~~6.~~ Administer child and family services under the direction and supervision of the state agency in conformity with title IV-B.
- ~~7.~~ 6. Administer federal payments for foster care and adoption assistance under the direction and supervision of the state agency in conformity with title IV-E.

**SECTION 9. AMENDMENT.** Section 50-09-08 of the North Dakota Century Code is amended and reenacted as follows:

**50-09-08. Investigations - Power of county agencies, state agency, and employees.**

- 1. In the investigation of applications under the provisions of this chapter, the county agencies, the state agency, and the officials and employees of such agencies charged with the administration and enforcement of this chapter may:
  - ~~1.~~ a. Conduct examinations;
  - ~~2.~~ b. Require the attendance of witnesses and the production of books, records, and papers; and
  - ~~3.~~ c. Make application to the district court of the county to compel the attendance of witnesses and the production of books, records, and papers.
- ~~4.~~ 2. ~~Request~~ The state agency may request from other state, county, and local agencies information deemed necessary to carry out the child support enforcement program. All officers and employees of state, county, and local agencies shall cooperate with the state ~~and county~~ agency in locating absent parents of children to whom an obligation of support is owed or on whose behalf assistance is being provided and, on request, shall supply the state ~~or county~~ agency with available information relative to the location, income, social security number, and property holdings of the absent parent, notwithstanding any provision of law making that information confidential. Any person acting under the authority of the state agency who pursuant to this subsection obtains information from the office of the state tax commissioner, the confidentiality of which is protected by law, may not divulge such information except to the extent necessary for the administration of the child support enforcement program or when otherwise directed by judicial order or when otherwise provided by law.
- 3. The officers and employees designated by the county agencies or the state agency may administer oaths and affirmations.

**SECTION 10. AMENDMENT.** Section 50-09-33 of the North Dakota Century Code is amended and reenacted as follows:

**50-09-33. (Effective through June 30, 2007) Continuing appropriation - Cooperative agreements for child support enforcement services.** All federal funds and other income generated by the state agency under a cooperative

agreement with ~~one or more county child support agencies for centralized administration of child support enforcement services, or with an Indian tribe for child support enforcement services;~~ is ~~are~~ appropriated on a continuing basis for the sole purpose of hiring additional staff and payment of other expenses as necessary to carry out the state agency's duties under the agreements.

**SECTION 11.** A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

**Employment of special assistant attorneys general.** The state agency may employ attorneys to carry out its duties in administering the child support enforcement and medical support enforcement programs. Any attorney who represents the state agency under this chapter must be a special assistant attorney general appointed by the attorney general under section 54-12-08. The salary and expenses of each special assistant attorney general must be paid by the state agency. An appointment under this section is revocable at the pleasure of the attorney general.

**SECTION 12. AMENDMENT.** Section 50-24.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-03.1. Duties of county agency.** In the administration of the medical assistance program, a county agency shall:

1. ~~Administer the medical support enforcement program under the direction and supervision of the department of human services. In administering the program the county agency shall have the authority to contract with any public or private agency or person to discharge their medical support enforcement duties.~~
2. ~~Make an investigation~~ investigate and record the circumstances of each applicant or recipient of assistance, in order to ascertain the facts supporting the application, or the granting of assistance, and ~~shall~~ obtain such other information as may be required by the rules and regulations of the department of human services.

**SECTION 13. AMENDMENT.** Section 50-24.1-03.2 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-03.2. Investigations - Power of county agencies, department, and employees.**

1. In the investigation of applications under the provisions of this chapter, the county agencies, the department of human services, and the officials and employees of such agencies charged with the administration and enforcement of this chapter may:
  1. a. Conduct examinations;
  2. b. Require the attendance of witnesses and the production of books, records, and papers; and
  3. c. Make application to the district court of the county to compel the attendance of witnesses and the production of books, records, and papers.



4. ~~2.~~ ~~Request~~ The department of human services may request from other state, county, and local agencies information deemed necessary to carry out the medical support enforcement program. All officers and employees of state, county, and local agencies shall cooperate with the department of human services ~~and the county agency~~ in locating absent spouses or parents of children to whom an obligation of support is owed or on whose behalf assistance is being provided and, on request, shall supply the department ~~or the county agency~~ with available information relative to the location, income, social security number, and property holdings of the absent spouse or parent, notwithstanding any provision of law making that information confidential. Any person acting under the authority of the department of human services who pursuant to this subsection obtains information from the office of the state tax commissioner, the confidentiality of which is protected by law, may not divulge such information except to the extent necessary for the administration of the medical support enforcement program or when otherwise directed by judicial order or when otherwise provided by law.
3. The officers and employees designated by the county agencies or the department of human services may administer oaths and affirmations.

**SECTION 14.** A new subdivision to subsection 3 of section 57-15-01.1 of the North Dakota Century Code is created and enacted as follows:

Reduced by the amount in dollars levied by a county in the base year for administration of the child support enforcement program by the county social service board and increased by section 17 of this Act.

**SECTION 15. REPEAL.** Section 50-09-34 of the North Dakota Century Code is repealed.

**SECTION 16. TRANSFER OF EMPLOYEES AND EQUIPMENT - HEALTH INSURANCE COVERAGE.** On the effective date of this Act, all existing employees of a regional child support enforcement agency become employees of the department of human services. Any employee who becomes a state employee under this section is entitled to receive a salary in an amount not less than the salary received as an employee of the regional child support enforcement agency, plus any increase for all state employees that is provided on July 1, 2007, and any other increase that was scheduled and budgeted to occur between July 1, 2007, and December 31, 2007, if the employee had remained an employee of a regional child support enforcement agency. Each year of county employment of an employee who is transferred under this section will be considered a year of state employment for purposes of section 54-06-14. Any equipment, including technology-related equipment, furnishings, and supplies in the control and custody of a regional child support enforcement agency on the effective date of this Act, must be transferred to the control and custody of the department of human services. Prior to the transfer of budgeted funds under section 19 of this Act, a regional child support agency shall pay the employer's share of any premium that is necessary to continue any existing health insurance coverage for an employee who is transferred under this section for one month after the effective date of this Act.

**SECTION 17. PAYMENT AND TRANSFER OF UNUSED LEAVE.** On the effective date of this Act, each employee who is transferred under this Act may elect to transfer some or all of the employee's unused annual and sick leave balances to the state. Any compensation to the employee for leave that is not transferred is the responsibility of the counties served by the regional child support enforcement

agency from which the employee was transferred. The current value of any leave that is transferred under this section must be deposited in the state general fund by the counties served by the regional child support enforcement agency from which the employee was transferred. As used in this section, "current value" of transferred annual leave is determined by multiplying each employee's hourly salary by the number of transferred hours of unused annual leave. The "current value" of transferred sick leave is determined by multiplying each employee's hourly salary by the number of transferred hours of unused sick leave, and then by multiplying the total for each employee by twenty percent plus one percent for every year of continuous service, not to exceed a total of thirty percent for those with ten years of continuous service or more. Any amounts owed to the state or an employee under this section are due on February 1, 2008, and may not be deducted from the amounts transferred under section 19 of this Act. Any leave that is transferred under this section becomes a responsibility of the state at the payment rate in effect for all state employees.

**SECTION 18. LEGISLATIVE COUNCIL STUDY - LOCALLY ADMINISTERED ECONOMIC ASSISTANCE PROGRAMS.** The legislative council shall consider studying, during the 2007-08 interim, the success and effects of the laws enacted by the fifty-fifth legislative assembly in House Bill No. 1041 and Senate Bill No. 2052, referred to in testimony as the "swap proposal", which required counties to pay the entire cost of the local administration of medicaid, energy assistance, basic care assistance, child care assistance, and temporary assistance for needy families in exchange for the state's assumption of the full responsibility for paying the grant costs associated with those programs. If conducted, the study should include a review of sections 50-01.2-00.1, 50-01.2-03.1, 50-01.2-03.2, 50-01.2-06, 50-03-00.1, 50-03-08, 50-03-09, and 50-03-10, subsection 28 of section 50-06-05.1, and sections 50-06-20, 50-24.1-14, and 50-24.5-08 to determine if those provisions have created a more understandable and sustainable division of responsibility between the state and counties in the delivery and financing of these economic assistance programs. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 19. TRANSFER OF BUDGETED FUNDS AND UNEXPENDED CHILD SUPPORT INCENTIVE FUNDS - APPROPRIATION.** On the effective date of this Act, the remaining balance of budgeted funds for each regional child support enforcement agency for calendar year 2007 and the balance of all unexpended child support incentive funds shall be transferred to the department of human services and are appropriated to the department of human services for the purpose of operating the eight regional child support enforcement agencies for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 20. APPROPRIATION - DEPARTMENT OF HUMAN SERVICES.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$6,873,169, or so much of the sum as may be necessary, and from special funds, derived from federal funds and other income, the sum of \$5,615,123, or so much of the sum as may be necessary, to the department of human services for the purpose of defraying the expenses of regional child support enforcement unit operations, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 21. LEGISLATIVE COUNCIL CORRECTION OF STATUTORY REFERENCES.** The legislative council may correct references to county, local, or regional child support agencies, to the state child support agency, and to the public authority as they pertain to the provision of child support enforcement or medical

support enforcement services, or any variation of these terms as appropriate, in the North Dakota Century Code and in any measure enacted by the sixtieth legislative assembly.

**SECTION 22. EXPIRATION DATE.** Section 1 of this Act is effective through December 31, 2007, and after that date is ineffective and section 14 of this Act is effective through December 31, 2009, and after that date is ineffective.

Approved April 20, 2007

Filed April 24, 2007

**CHAPTER 418****SENATE BILL NO. 2186**

(Senators Wardner, Krebsbach, Mathern)  
(Representatives Gulleon, Hawken, Martinson)

**EARLY CHILDHOOD WORKFORCE DEVELOPMENT**

AN ACT to create and enact a new section to chapter 50-09 and a new section to chapter 50-11.1 of the North Dakota Century Code, relating to transition assistance for child care and early childhood workforce development; to provide for a report to the legislative council; to provide for legislative council studies; and to provide an appropriation.

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

**SECTION 1.** A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

**Transition assistance for child care.** The state agency shall establish a program of transition assistance to pay a portion of the cost of child care for families that lose eligibility, and remain ineligible, for benefits under section 50-09-29 due to earnings from employment. This program must:

1. Provide benefits for up to the six months following the loss of benefits under section 50-09-29;
2. Be paid directly to recipients using a debit card; and
3. Meet all requirements to be considered "assistance" for purposes of title 45, Code of Federal Regulations, part 260, section 31, or any substantially similar federal regulation that may replace title 45, Code of Federal Regulations, part 260, section 31.

**SECTION 2.** A new section to chapter 50-11.1 of the North Dakota Century Code is created and enacted as follows:

**Workforce development.** The department may establish a statewide system to build systematic early childhood workforce voluntary training which may include distance learning formats, a professional registry, certificates, and specializations.

**SECTION 3. LEGISLATIVE COUNCIL STUDY - TEMPORARY ASSISTANCE FOR NEEDY FAMILIES.** The legislative council shall consider studying, during the 2007-08 interim, the temporary assistance for needy families program administered by the department of human services. The study may include review of the sustainability of current services and programs being funded by temporary assistance for needy families funds, review of the potential programs and services that could be funded by use of temporary assistance for needy families funds, and review of the need for increased assistance to recipients of temporary assistance for needy families who are attending a postsecondary institution of learning. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 4. LEGISLATIVE COUNCIL STUDY - CHILD CARE RESOURCE AND REFERRAL SYSTEM.** The legislative council shall consider studying, during the 2007-08 interim, the state's child care resource and referral system, including consideration of the purposes and goals of the system and whether the current system is furthering these purposes and goals and consideration of the most appropriate funding source of the system. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 5. REPORT TO LEGISLATIVE COUNCIL - DEPARTMENT OF HUMAN SERVICES.** During the 2007-08 interim, the department of human services shall report to the legislative council regarding the transition assistance for the child care program implemented pursuant to section 1 of this Act.

**SECTION 6. APPROPRIATION.** There is appropriated out of any moneys from special funds derived from federal funds and other income from the temporary assistance for needy families program the sum of \$1,491,210, or so much of the sum as may be necessary, to the department of human services for the purpose of implementing section 1 of this Act, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 7. APPROPRIATION.** There is appropriated out of any moneys from special funds derived from federal funds and other income transferred from the temporary assistance for needy families program the sum of \$500,000, or so much of the sum as may be necessary, to the department of human services for the purpose of implementing section 2 of this Act, for the biennium beginning July 1, 2007, and ending June 30, 2009. The department may transfer the funds provided for under this section to the child care development block grant.

**SECTION 8. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$166,221, or so much of the sum as may be necessary, to the department of human services for the purpose of replacing the reduction in child care development fund grants, for the biennium beginning July 1, 2007, and ending June 30, 2009.

Approved May 2, 2007  
Filed May 3, 2007

**CHAPTER 419****HOUSE BILL NO. 1390**

(Representatives Kerzman, Wald)  
(Senator Krauter)

**FOSTER CHILDREN DAMAGE LIABILITY COVERAGE**

AN ACT to create and enact a new section to chapter 50-11 of the North Dakota Century Code, relating to liability coverage for damage caused by foster children.

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

**SECTION 1.** A new section to chapter 50-11 of the North Dakota Century Code is created and enacted as follows:

**Department to provide liability coverage.**

1. The department shall provide liability coverage for acts or omissions of foster children placed in the care of foster families. The department may provide this liability coverage through self-insurance.
2. The liability coverage under this section:
  - a. Must provide coverage for damage to property which is caused by the act of a foster child. This coverage must be for the lesser of the reasonable cost to repair or to replace the damaged property.
  - b. Is secondary to any other coverage.
  - c. May not exceed five thousand dollars per claim, with an annual maximum of ten thousand dollars per year per claimant. The coverage under this subsection must include a deductible not to exceed one hundred dollars per claim.
3. The department may provide for exclusions from liability coverage provided under this section.

Approved April 18, 2007  
Filed April 19, 2007

**CHAPTER 420****SENATE BILL NO. 2359**

(Senators Tallackson, J. Lee)  
(Representatives Damschen, Herbel)

**MATERNITY HOMES**

AN ACT to amend and reenact sections 50-19-01, 50-19-02, 50-19-03, 50-19-03.1, 50-19-04, 50-19-05, 50-19-06, 50-19-07, 50-19-10, 50-19-11, 50-19-12, 50-19-13, and 50-19-14 of the North Dakota Century Code, relating to maternity homes; and to repeal sections 50-19-08 and 50-19-09 of the North Dakota Century Code, relating to births at maternity homes.

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

**SECTION 1. AMENDMENT.** Section 50-19-01 of the North Dakota Century Code is amended and reenacted as follows:

**50-19-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Department" means the department of human services.
2. "Maternity home ~~for unmarried mothers~~" means any ~~hospital, home,~~ or other premises, operating especially to provide social services ~~and, maternity care, and child care to unmarried pregnant or recently delivered mothers and their infants,~~ which receives more than one ~~unmarried woman during any period of six months for any length of time for shelter, or care, or treatment during pregnancy, or delivery, or within sixty one hundred twenty days after delivery.~~ It does not include any ~~hospital, home,~~ or other premises owned or operated by state or federal governments.

**SECTION 2. AMENDMENT.** Section 50-19-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-19-02. License required.** Any person, partnership, voluntary association, corporation, or limited liability company which operates a maternity home ~~for unmarried mothers~~ shall secure ~~annually~~ from the department a license at least once every two years as required in this chapter.

**SECTION 3. AMENDMENT.** Section 50-19-03 of the North Dakota Century Code is amended and reenacted as follows:

**50-19-03. Requirements for license.** A license for the operation of a maternity home ~~for unmarried mothers~~ must be issued by the department to a reputable and responsible person, partnership, voluntary association, corporation, or limited liability company, upon showing that:

1. The premises to be used are in fit sanitary condition and properly equipped to provide good care and treatment;

2. The persons in active charge of the home and their assistants are qualified by training and experience to carry on efficiently the duties required of them;
3. The home is to be conducted for the public good and in accordance with sound social policy; and
4. The health and well-being of the infants ~~born therein and the health, morality, and well-being of the parties treated therein~~ who receive services will be properly safeguarded.

**SECTION 4. AMENDMENT.** Section 50-19-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-19-03.1. Conviction not bar to licensure - Exceptions.** Conviction of an offense does 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 operator of a maternity home ~~for unmarried mothers~~, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

**SECTION 5. AMENDMENT.** Section 50-19-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-19-04. Inspection and report by state department of health and state fire marshal.** The department shall give notice to the state department of health and state fire marshal of ~~all applications~~ each application for a license to operate a maternity home ~~for unmarried mothers~~. Upon receipt of ~~such the~~ notice, the state department of health and the fire marshal shall inspect the facilities and premises of the applicant to determine ~~sanitary conditions and the adequacy of medical and nursing services~~ compliance with health and fire safety standards and shall report ~~its~~ their findings to the department.

**SECTION 6. AMENDMENT.** Section 50-19-05 of the North Dakota Century Code is amended and reenacted as follows:

**50-19-05. Contents of license.** The license to operate a maternity home ~~for unmarried mothers~~ issued under the provisions of this chapter must set forth:

1. The name of the licensee.
2. The premises to which the license is applicable.
3. The number of patients who may be received in such premises at any one time.
4. The date of expiration of the license.

**SECTION 7. AMENDMENT.** Section 50-19-06 of the North Dakota Century Code is amended and reenacted as follows:

**50-19-06. Regulation by department.** The department may prescribe forms for the registration and record of ~~persons cared for~~ any individual who receives services in maternity homes ~~for unmarried mothers~~ and may adopt reasonable rules for the conduct of such homes as are necessary to carry out the purposes of this



chapter. The department shall require reports from the licensee which must include a statement of plans made for the ~~unmarried~~ mother and her child.

**SECTION 8. AMENDMENT.** Section 50-19-07 of the North Dakota Century Code is amended and reenacted as follows:

**50-19-07. Inspection of maternity home for ~~unmarried mothers~~ and the records thereof.** The department and its authorized agents may inspect any maternity home ~~for unmarried mothers~~ licensed under this chapter at any time. The department and its agents shall have free access to every part of such home and to the records thereof, and they may see and interview ~~the patients therein~~ any individual who receives services from the maternity home.

**SECTION 9. AMENDMENT.** Section 50-19-10 of the North Dakota Century Code is amended and reenacted as follows:

**50-19-10. Records of maternity home confidential.** Except as otherwise authorized by law, no agent of the state department of health, ~~the state fire marshal,~~ or the department, or the licensee, under this chapter, may disclose the contents of the records of a maternity home ~~for unmarried mothers~~ nor of the reports received from them, except:

1. In a judicial or administrative proceeding in response to an order of a court or administrative tribunal; or
2. For a law enforcement purpose to a law enforcement official or a health oversight agency for oversight activities authorized by law.

**SECTION 10. AMENDMENT.** Section 50-19-11 of the North Dakota Century Code is amended and reenacted as follows:

**50-19-11. Offer or advertise to ~~dispose of infants~~ place a child for adoption prohibited.** No maternity home ~~for unmarried mothers~~ licensed under ~~the provisions of~~ this chapter may in any way offer to ~~dispose of any~~ place a child, or advertise that it will give children for adoption, or hold itself out, directly or indirectly, as being able to ~~dispose of~~ place children for adoption, but may inform ~~an unmarried~~ a mother of licensed child-placing agencies.

**SECTION 11. AMENDMENT.** Section 50-19-12 of the North Dakota Century Code is amended and reenacted as follows:

**50-19-12. Revocation of license.** The department may revoke a license of any maternity home ~~for unmarried mothers~~ upon a proper showing of any of the following:

1. Any of the conditions set forth in section 50-19-03 as requirements for the issuance of the license no longer exists.
2. The license was issued upon fraudulent or untrue representations.
3. The owner or operator has violated any of the rules of the department.
4. The owner or operator of the maternity home 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 an owner or operator, or the department determines, following the owner's or operator's conviction of

any other offense, that the owner or operator is not sufficiently rehabilitated under section 12.1-33-02.1.

**SECTION 12. AMENDMENT.** Section 50-19-13 of the North Dakota Century Code is amended and reenacted as follows:

**50-19-13. Hearing on denial or revocation of license.** Before any application for a license to conduct a maternity home ~~for unmarried mothers~~ is denied or before the revocation of any such license by the department, written charges as to the reasons therefor must be served upon the applicant or licensee, who has the right to a hearing before the department, if a hearing is requested within ten days after service of the written charges.

**SECTION 13. AMENDMENT.** Section 50-19-14 of the North Dakota Century Code is amended and reenacted as follows:

**50-19-14. Cooperation of interested persons and agencies.** The licensee of a maternity home ~~for unmarried mothers, the physician, or other responsible person in attendance at birth~~, the state department of health and its agents, the state fire marshal and the fire marshal's designees, and the department and its agents shall cooperate in all measures and services for improving and safeguarding the health and social well-being of ~~maternity patients~~ mothers and their infants ~~cared for who receive services in a maternity home for unmarried mothers~~.

**SECTION 14. REPEAL.** Sections 50-19-08 and 50-19-09 of the North Dakota Century Code are repealed.

Approved March 9, 2007  
Filed March 12, 2007

**CHAPTER 421****SENATE BILL NO. 2124**

(Human Services Committee)

(At the request of the Department of Human Services)

**MEDICAL ASSISTANCE PROVISION  
IMPLEMENTATION**

AN ACT to amend and reenact sections 50-24.1-02.5 and 50-24.1-07 of the North Dakota Century Code, relating to implementing federal medical assistance provisions; to repeal sections 50-24.1-02.9 and 50-24.1-21 of the North Dakota Century Code, relating to long-term care insurance and medical assistance waiver provisions inconsistent with federal law; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 50-24.1-02.5 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-02.5. Effect of purchase of insurance on disqualifying transfer.**

1. An individual who secures and maintains insurance that covers the cost of substantially all necessary medical care, including necessary care in a nursing home and necessary care for an individual who qualifies for admission to a nursing home but receives care elsewhere, for at least thirty-six months after the date an asset is disposed of, may demonstrate that the asset was disposed of exclusively for a purpose other than to qualify for medical assistance by providing proof of that insurance.
2. If purchased after July 31, 2003, the insurance coverage under this section must include home health care coverage, assisted living coverage, basic care coverage, and skilled nursing facility coverage. The coverage required under this subsection must include a daily benefit equal to at least one and fifty-seven hundredths times the average daily cost of nursing care for the year in which the policy was issued and an aggregate benefit equal to at least one thousand ninety-five times that daily benefit.
3. This section applies only to policies purchased before the effective date of an approved amendment to the state plan for medical assistance that provides for a qualified state long-term care insurance partnership under section 1917(b) of the Social Security Act [42 U.S.C. 1396p].
4. The department of human services shall certify to the legislative council the effective date described in subsection 3.

<sup>206</sup> **SECTION 2. AMENDMENT.** Section 50-24.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-07. Recovery from estate of medical assistance recipient.**

1. On the death of any recipient of medical assistance who was fifty-five years of age or older when the recipient received the assistance, and on the death of the spouse of the deceased recipient, the total amount of medical assistance paid on behalf of the recipient following the recipient's fifty-fifth birthday must be allowed as a preferred claim against the decedent's estate after payment, in the following order, of:
  - a. Funeral expenses not in excess of three thousand dollars;
  - b. Expenses of last illness;
  - c. Expenses of administering the estate, including attorney's fees approved by the court;
  - d. Claims made under chapter 50-01;
  - e. Claims made under chapter 50-24.5; ~~and~~
  - f. Claims made under chapter 50-06.3 and on behalf of the state hospital; ~~and~~
  - g. Claims made under subsection 4.
2. A claim may not be required to be paid nor may interest begin to accrue during the lifetime of the decedent's surviving spouse, if any, nor while there is a surviving child who is under the age of twenty-one years or is blind or permanently and totally disabled, but no timely filed claim may be disallowed because of the provisions of this section.
3. Every personal representative, upon the granting of letters of administration or testamentary shall forward to the department of human services a copy of the petition or application commencing probate, heirship proceedings, or joint tenancy tax clearance proceedings in the respective district court, together with a list of the names of the legatees, devisees, surviving joint tenants, and heirs at law of the estate. Unless a properly filed claim of the department of human services is paid in full, the personal representative shall provide to the department a statement of assets and disbursements in the estate.
4. a. The department of human services shall, after September thirtieth of each year, divide the average amount required to be paid each month under 42 U.S.C. 1396u-5(c)(1)(A), or a substantially similar federal law, during the twelve months preceding that September thirtieth, by the average number of full-benefit dual-eligibles each month during the same period.

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<sup>206</sup> Section 50-24.1-07 was also amended by section 1 of House Bill No. 1351, chapter 424.

- b. In each calendar year following determination of an amount under subdivision a, the claims of the department of human services made against the decedent's estate of a recipient of medical assistance, or against the decedent's estate of the spouse of a deceased recipient of medical assistance, must include a claim for amount equal to the amount determined under subdivision a multiplied times the number of full or partial months during which the deceased recipient received medical assistance under this chapter.
5. All assets in the decedent's estate of the spouse of a deceased medical assistance recipient are presumed to be assets in which that recipient had an interest at the time of the recipient's death.
6. To the extent a claim for repayment of medical assistance arises for services provided in months during which the department of human services has in effect an approved state plan amendment that provides for the disregard of assets in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary of an insurance policy under a qualified state long-term care insurance partnership, the department's claim need not be paid out of assets of the decedent's estate of a recipient of medical assistance, or assets of the decedent's estate of the spouse of such a recipient, of a value equal to an amount the estate demonstrates was paid for long-term care provided to the recipient of medical assistance during those months by that insurance policy.
7. For purposes of this section:
- a. "Full-benefit dual-eligible" has the meaning provided in 42 U.S.C. 1396u-5; and
- b. "Qualified state long-term care insurance partnership" has the meaning provided in 42 U.S.C. 1396p(b).

**SECTION 3. REPEAL.** Sections 50-24.1-02.9 and 50-24.1-21 of the North Dakota Century Code are repealed.

**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 2, 2007  
Filed March 2, 2007

**CHAPTER 422****HOUSE BILL NO. 1463**

(Representatives Porter, Price, Weisz)  
(Senators Fischer, J. Lee)

**CHILDREN'S HEALTH INSURANCE PROGRAM  
ELIGIBILITY**

AN ACT to amend and reenact subsection 3 of section 50-24.1-02.6 and section 50-29-04 of the North Dakota Century Code, relating to medical assistance eligibility for minors and eligibility under the state children's health insurance program; to provide a contingent appropriation; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 50-24.1-02.6 of the North Dakota Century Code is amended and reenacted as follows:

3. The department of human services shall establish income levels for minors, based on the age of the minors, at amounts, no less than required by federal law, that provide an income level for all ~~minors born before September 30, 1983,~~ individuals from birth through age eighteen equal to one hundred ~~thirty-three~~ thirty-three percent of the federal poverty level in the month for which eligibility for medical assistance benefits is being determined ~~and that do not exceed legislative appropriations for that purpose.~~

**SECTION 2. AMENDMENT.** Section 50-29-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-29-04. Plan requirements.** The plan:

1. Must be provided through private contracts with insurance carriers;
2. Must allow conversion to another health insurance policy;
3. Must be based on an actuarial equivalent of a benchmark plan;
4. Must incorporate every state-required waiver approved by the federal government;
5. Must include community-based eligibility outreach services; and
6. Must provide:
  - a. ~~An~~ A net income eligibility limit of one hundred ~~forty~~ fifty percent of the poverty line;
  - b. A copayment requirement for each pharmaceutical prescription and for each emergency room visit;

- c. A deductible for each inpatient hospital visit;
- d. Coverage for:
  - (1) Inpatient hospital, medical, and surgical services;
  - (2) Outpatient hospital and medical services;
  - (3) Psychiatric and substance abuse services;
  - (4) Prescription medications;
  - (5) Preventive screening services;
  - (6) Preventive dental and vision services; and
  - (7) Prenatal services; and
- e. A coverage effective date that is the first day of the month, following the date of application and determination of eligibility.

**SECTION 3. CONTINGENT APPROPRIATION.** If section 1 of this Act does not become effective and section 2 of this Act does become effective, there is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$144,067 and from special funds derived from federal funds and other income \$2,196,987 to the department of human services for the purpose of defraying the expenses of implementing the expansion of the state children's health insurance program as described in section 2 of this Act for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 4. EFFECTIVE DATE.** Section 1 of this Act becomes effective on the date the department of human services certifies to the legislative council that the department has received approval to claim federal financial participation to expand medical assistance benefits to children as described in section 1 of this Act.

**SECTION 5. EFFECTIVE DATE.** Section 2 of this Act becomes effective on the date the department of human services certifies to the legislative council that the federal reauthorization of the state children's health insurance program resulted in an allotment to the state in an amount that is sufficient to fund the increase identified in section 2 of this Act.

Approved April 24, 2007  
Filed April 25, 2007

**CHAPTER 423****SENATE BILL NO. 2071**

(Human Services Committee)

(At the request of the Department of Human Services)

**ANNUITY TRANSFERS**

AN ACT to amend and reenact section 50-24.1-02.8 of the North Dakota Century Code, relating to medical assistance and transfers involving annuities.

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

**SECTION 1. AMENDMENT.** Section 50-24.1-02.8 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-02.8. Transfers involving annuities.**

1. For purposes of this section, "annuity" means a policy, certificate, contract, or other arrangement between two or more parties whereby one party pays money or other valuable consideration to the other party in return for the right to receive payments in the future. ~~Except for purposes of subsections 3 and 5, the term does not mean an employee benefit that qualifies for favorable tax treatment under the Internal Revenue Code or a plan described in the Internal Revenue Code as a retirement plan under which contributions must end and withdrawals begin by age seventy and one-half.~~
2. ~~The purchase of an~~ An annuity purchased before August 1, 2005, an instrument purporting to be an annuity, or any other arrangement that meets the definition of annuity in subsection 4 is considered an available asset and its purchase is an uncompensated assignment or transfer of assets under section 50-24.1-02, resulting in a penalty under the applicable rules established by the department of human services unless the following criteria are met:
  - a. The annuity is a single premium immediate annuity or an annuity in which a settlement option has been selected, is irrevocable, and cannot be assigned to another person.
  - b. The annuity is purchased from an insurance company or other commercial company that sells annuities as part of the normal course of business.
  - c. The annuity provides substantially equal monthly payments of principal and interest and does not have a balloon or deferred payment of principal or interest. Payments will be considered substantially equal if the total annual payment in any year varies by five percent or less from the payment in the previous year.
  - d. The annuity will return the full principal and interest within the purchaser's life expectancy as determined by the life expectancy tables published by the centers for medicare and medicaid services.



- e. The monthly payments from the annuity, unless specifically ordered otherwise by a court of competent jurisdiction, do not exceed the maximum monthly income amount allowed for a community spouse as determined under 42 U.S.C. 1396r-5.
3. Unless done in compliance with subsection 4, a provision in an annuity that purports to preclude assignment or transfer of any interest in the annuity is void as against public policy upon application of the purchaser, the purchaser's spouse, the annuitant, or the annuitant's spouse for benefits under this chapter. This subsection applies only to an annuity for which a payment option has been irrevocably selected after July 31, 2005.
4. An annuity, ~~an instrument purporting to be an annuity, or any other arrangement that meets the definition of annuity in subsection 4,~~ purchased after July 31, 2005, and before February 8, 2006, is not an available asset and the expenditure of funds to purchase such an annuity, instrument, or other arrangement may not be considered to be a disqualifying transfer of an asset for purposes of this chapter if:
  - a. The annuity is purchased from an insurance company or other commercial company that sells annuities as part of the normal course of business;
  - b. The annuity is irrevocable and neither the annuity nor payments due under the annuity may be assigned or transferred;
  - c. The monthly payments from all annuities owned by the purchaser that comply with this subsection may not exceed the minimum monthly maintenance needs allowance for a community spouse as determined by the department pursuant to 42 U.S.C. 1396r-5 and, when combined with the purchaser's other monthly income, at the time of application of the purchaser, the purchaser's spouse, the annuitant, or the annuitant's spouse, for benefits under this chapter, do not exceed one hundred fifty percent of the minimum monthly maintenance needs allowance allowed for a community spouse as determined by the department pursuant to 42 U.S.C. 1396r-5;
  - d. The annuity provides substantially equal monthly payments of principal and interest and does not have a balloon or deferred payment of principal or interest. Payments will be considered substantially equal if the total annual payment in any year varies by five percent or less from the payment in the previous year;
  - e. The annuity will return the full principal and has a guaranteed period that is equal to at least eighty-five percent of the purchaser's life expectancy as determined by the life expectancy tables used by the department of human services; and
  - f. The annuity does not include any provision that limits the effect of subsection 5.
5. ~~Except as provided in subsection 2, before~~ Before benefits under this chapter may be provided to an otherwise eligible applicant who is fifty-five years of age or older, the department of human services, or the

successor of that department, must be irrevocably named on each annuity owned by that applicant, or by the spouse of that applicant, that complies with subsection 4, as primary beneficiary for payment of amounts due following the death of the applicant and the applicant's spouse, if any, not to exceed the amount of benefits paid under this chapter on behalf of that applicant after age fifty-five, plus interest on that amount at the legal rate from six months after the applicant's death. If the department receives notice within ninety days of the death of the applicant or the applicant's spouse that reliably demonstrates that the applicant is survived by a minor child who resided and was supported financially by the deceased or by a permanently and totally disabled child, the department shall remit any payments made to the department under this section to those survivors in equal shares. When the obligations to the minor child or children who resided and were supported financially by the deceased or the permanently and totally disabled child or children and the department are fulfilled, the department shall remit any future payments made to the department under this section to the contingent beneficiaries selected by the annuitant regarding each annuity owned by the applicant or by the spouse of the applicant ~~which complies with subsection 4.~~

6. The purchase of an annuity on or after February 8, 2006, or the selection or alteration on or after February 8, 2006, of a payment option for an annuity purchased at any time, is a disqualifying transfer of an asset for purposes of this chapter unless:
  - a. The state is named as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant or the state is named in the second position after the community spouse or minor or disabled child and is named in the first position if the community spouse or a representative of the minor or disabled child disposes of any remainder for less than fair market value;
  - b. The annuity is purchased from an insurance company or other commercial company that sells annuities as part of the normal course of business;
  - c. The annuity is irrevocable and neither the annuity nor payments due under the annuity may be assigned or transferred;
  - d. The annuity provides substantially equal monthly payments of principal and interest and does not have a balloon or deferred payment of principal or interest. Payments will be considered substantially equal if the total annual payment in any year varies by five percent or less from the payment in the previous year; and
  - e. The annuity will return the full principal and interest within the purchaser's life expectancy as determined in accordance with actuarial publications of the office of the chief actuary of the social security administration.
7. An annuity purchased on or after February 8, 2006, or a payment option selected or altered on or after February 8, 2006, with respect to an annuity purchased at any time is an asset for purposes of this chapter unless:

- a. The annuity meets all of the requirements of subsection 6;
  - b. The monthly payments from all annuities owned by the purchaser that comply with this subsection do not exceed the minimum monthly maintenance needs allowance for a community spouse of the maximum amount allowed pursuant to 42 U.S.C. 1396r-5 and, at the time of application for benefits under this chapter, the total combined income from all sources of the purchaser and the purchaser's spouse, or the annuitant and the annuitant's spouse, does not exceed one hundred fifty percent of the minimum monthly maintenance needs allowance allowed for a community spouse of the maximum amount allowed pursuant to 42 U.S.C. 1396r-5; and
  - c. The annuity will return the full principal and has a guaranteed period that is equal to at least eighty-five percent of the purchaser's life expectancy as determined by the life expectancy tables used by the department of human services.
8. Except for the provision in subdivision a of subsection 6, this section does not apply to:
- a. An annuity described in subsection b or q of section 408 of the Internal Revenue Code of 1986;
  - b. An annuity purchased with proceeds from an account or trust described in subsection a, c, or p of section 408 of the Internal Revenue Code of 1986;
  - c. A simplified employee pension within the meaning of subsection k of section 408 of the Internal Revenue Code of 1986; or
  - d. A Roth IRA described in section 408A of the Internal Revenue Code of 1986.

Approved May 1, 2007  
Filed May 2, 2007

**CHAPTER 424****HOUSE BILL NO. 1351**

(Representatives Kreidt, Pietsch, Pollert)  
(Senator Dever)

**MEDICAL ASSISTANCE RECIPIENT ESTATE CLAIMS**

AN ACT to amend and reenact section 50-24.1-07 of the North Dakota Century Code, relating to claims against medical assistance recipients' estates.

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

<sup>207</sup> **SECTION 1. AMENDMENT.** Section 50-24.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-07. Recovery from estate of medical assistance recipient.**

1. On the death of any recipient of medical assistance who was a resident of a nursing facility, intermediate care facility for the mentally retarded, or other medical institution and with respect to whom the department of human services determined that resident reasonably was not expected to be discharged from the medical institution and to return home, or who was fifty-five years of age or older when the recipient received the assistance, and on the death of the spouse of the deceased recipient, the total amount of medical assistance paid on behalf of the recipient following the determination that the recipient cannot reasonably be expected to be discharged from the medical institution, or the recipient's fifty-fifth birthday, as the case may be, must be allowed as a preferred claim against the decedent's estate after payment, in the following order, of:
  - a. Funeral expenses not in excess of three thousand dollars;
  - b. Expenses of the last illness, other than those incurred by medical assistance;
  - c. Expenses of administering the estate, including attorney's fees approved by the court;
  - d. Claims made under chapter 50-01;
  - e. Claims made under chapter 50-24.5; and
  - f. Claims made under chapter 50-06.3 and on behalf of the state hospital.

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<sup>207</sup> Section 50-24.1-07 was also amended by section 2 of Senate Bill No. 2124, chapter 421.

2. A claim may not be required to be paid nor may interest begin to accrue during the lifetime of the decedent's surviving spouse, if any, nor while there is a surviving child who is under the age of twenty-one years or is blind or permanently and totally disabled, but no timely filed claim may be disallowed because of the provisions of this section.
3. Every personal representative, upon the granting of letters of administration or testamentary shall forward to the department of human services a copy of the petition or application commencing probate, heirship proceedings, or joint tenancy tax clearance proceedings in the respective district court, together with a list of the names of the legatees, devisees, surviving joint tenants, and heirs at law of the estate. Unless a properly filed claim of the department of human services is paid in full, the personal representative shall provide to the department a statement of assets and disbursements in the estate.

Approved April 17, 2007

Filed April 18, 2007

**CHAPTER 425****SENATE BILL NO. 2133**

(Human Services Committee)

(At the request of the Department of Human Services)

**MEDICAL ASSISTANCE CONSUMER-DIRECTED CARE**

AN ACT to amend and reenact section 50-24.1-18.1 of the North Dakota Century Code, relating to consumer-directed care for medical assistance recipients.

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

**SECTION 1. AMENDMENT.** Section 50-24.1-18.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-18.1. Personal care Consumer-directed health maintenance services - Residing at home.** ~~Subject to the requirements under title 42, Code of Federal Regulations, part 440, section 467, the~~ The department of human services shall provide a personal care services program for eligible medical assistance recipients ~~who are residing in their own homes.~~ The department shall seek a waiver of federal law provide an attendant care program to permit disabled and elderly individuals to direct their own care and to permit personal care health maintenance services authorized under this section to be provided by nonlicensed personal care service providers. Health maintenance services means care that enables an individual to live at home, and which is based upon the determination of a physician which concludes that the individual is medically stable and is competent to direct the care provided by a nonlicensed care provider. Health maintenance services includes assistance with the activities of daily living such as getting in and out of bed, wheelchair, or motor vehicle; assistance with routine bodily functions such as bathing and personal hygiene, dressing, and grooming; and feeding, including preparation and cleanup. Health maintenance services also include any other medical, nursing, or home health care services that will maintain the health and well-being of the individual and will allow the individual to remain in the community and which are services that an individual without a functional disability would customarily and personally perform without the assistance of a licensed health care provider, such as catheter irrigation, administration of medications, or wound care.

Approved March 2, 2007

Filed March 2, 2007

**CHAPTER 426****SENATE BILL NO. 2131**

(Industry, Business and Labor Committee)  
(At the request of the Department of Human Services)

**HEALTH INSURER INFORMATION**

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to information provided by health insurers to the department of human services; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

**Insurers to provide certain information to the department of human services.**

1. For purposes of this section:

- a. "Department" means the department of human services or its agent.
- b. "Health insurer" includes self-insured plans, group health plans as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1167(1)], service benefit plans, managed care organizations, pharmacy benefit managers, or other parties that legally are responsible by statute, contract, or agreement for payment of a claim for a health care item or service.
- c. "Medical assistance" means benefits paid under chapter 50-24.1 and title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].

2. As a condition of doing business in this state, health insurers shall provide to the department upon its request and in a manner prescribed by the department information about individuals who are eligible for medical assistance so the department may determine during what period the individual or the individual's spouse or dependents may be or may have been covered by a health insurer and the nature of the coverage provided by the health insurer, including the name, address, and identifying number of the plan. Notwithstanding any other provision of law, every health insurer, not more frequently than twelve times in a year, shall provide to the department upon its request information, including automated data matches conducted under the direction of the department, as necessary, to:

- a. Identify individuals covered under the insurer's health benefit plans who are also recipients of medical assistance;
- b. Determine the period during which the individual or the individual's spouse or the individual's dependents may be or may have been covered by the health benefit plan; and

c. Determine the nature of the coverage.

The insurer must provide the information required in this subsection to the department at no cost if the information is in a readily available structure or format. If the department requests the information in a structure or format that is not readily available, the insurer may charge a reasonable fee for providing the information, not to exceed the actual cost of providing the information.

3. To facilitate the department in obtaining the information required by this section, a health insurer shall:

a. Cooperate with the department to determine whether a medical assistance recipient may be covered under the insurer's health benefit plan and is eligible to receive benefits under the health benefit plan for services provided under the medical assistance program.

b. Respond to the request for information within ninety days after receipt of written proof of loss or claim for payment for health care services provided to a recipient of medical assistance who is covered by the insurer's health benefit plan.

c. Accept the department's right of recovery and the assignment to the department of any right of an individual or other entity to payment from a liable third party for an item or service for which payment has been made under the state medical assistance plan.

d. Respond to any inquiry by the department regarding a claim for payment for any health care item or service that is submitted no later than three years after the date of the provision of the health care item or service.

e. Agree not to deny a claim submitted by the department solely on the basis of the date of submission of the claim, the type of format of the claim form, or a failure to present proper documentation at the point of sale that is the basis of the claim if:

(1) The claim is submitted by the department within the three-year period beginning on the date on which the item or service was furnished; and

(2) Any action by the department to enforce its rights with respect to such claim is commenced within six years of the department's submission of the claim.

4. A health insurer is prohibited, in enrolling an individual or on the individual's behalf, from taking into account that the individual is eligible for or is provided medical assistance.

5. The department may not use or disclose any information provided by the insurer other than as permitted or required by law. The insurer may not be held liable for the release of insurance information to the department or a department agent if the release is authorized under this section.



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

Approved March 7, 2007

Filed March 8, 2007

**CHAPTER 427****SENATE BILL NO. 2132**

(Human Services Committee)

(At the request of the Department of Human Services)

**MEDICAL ASSISTANCE THIRD-PARTY PAYMENTS**

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to responsibilities of third parties liable for payments on behalf of medical assistance recipients.

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

**SECTION 1.** A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

**Third-party liability recovery.**

1. For purposes of this section:
  - a. "Department" means the department of human services.
  - b. "Third party" means an individual, entity, or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished under this chapter.
2. The department shall seek recovery of reimbursement from a third party up to the full amount of medical assistance paid.
3. A medical assistance recipient shall inform the department of any rights the recipient has to third-party benefits and shall inform the department of the name and address of any individual, entity, or program that is or may be liable to provide third-party benefits.
4. A release or satisfaction of a cause of action, suit, claim, counterclaim, demand, judgment, settlement, or settlement agreement is not valid or effectual as against a claim created under this chapter unless the department joins in the release or satisfaction or executes a release of its claim.
5. The department shall recover the full amount of all medical assistance provided on behalf of a recipient to the full extent of third-party benefits received by the recipient or the department for medical expenses. The department shall recover the third-party benefits directly from any third party or from the recipient or legal representative, if the recipient or legal representative has received third-party benefits, up to the amount of medical assistance provided to the recipient.
6. An applicant for or recipient of medical assistance shall cooperate in the recovery of third-party benefits.

7. To enforce its rights to third party benefits, the department may institute, intervene in, or join any legal or administrative proceeding in its own name.
  - a. If either the recipient or the department brings an action against a third party, the recipient or the department must provide to the other within thirty days after commencing the action written notice by personal delivery or registered mail of the action, the name of the court in which the case is brought, the case number of such action, and a copy of the pleadings. If either the department or the recipient brings an action, the other may become a party to or may consolidate an action brought independently with the other.
  - b. A judgment, award, or settlement of a claim in an action by a recipient to recover damages for injuries or other third-party benefits in which the department has an interest may not be satisfied or released without first giving the department notice and a reasonable opportunity to file and satisfy its claim or proceed with any action as otherwise permitted by law.
8. Any transfer or encumbrance of any right, title, or interest to which the department has a right with the intent, likelihood, or practical effect of defeating, hindering, or reducing recovery by the department for reimbursement of medical assistance provided to a recipient is void and of no effect against the claim of the department.
9. A recipient who has notice or who has actual knowledge of the department's rights to third-party benefits who receives any third-party benefit or proceeds for a covered illness or injury is either required to pay the department within sixty days after receipt of settlement proceeds the full amount of the third-party benefits up to the total medical assistance provided or to place a sum equal to the full amount of the total medical assistance provided in a trust account pending judicial or administrative determination of the department's right to the third-party benefits.
10. Notwithstanding any provision in this section to the contrary, the department is not required to seek reimbursement from, or may reduce or compromise a claim against, a liable third party on claims for which the amount it reasonably expects to recover will be less than the cost of recovery or for which recovery efforts will not be cost-effective. Cost-effectiveness is determined based on the following:
  - a. Actual and legal issues of liability as may exist between the recipient and the liable party;
  - b. Total funds available for settlement; and
  - c. An estimate of the cost to the department of pursuing its claim.

Approved March 2, 2007  
Filed March 2, 2007

**CHAPTER 428****SENATE BILL NO. 2326**

(Senators Mathern, Fischer, J. Lee)  
(Representatives Price, Schneider)

**MEDICAL ASSISTANCE FOR FAMILIES OF DISABLED  
CHILDREN**

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to medical assistance and other health coverage for families of children with disabilities; and to provide an appropriation.

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

**SECTION 1.** A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

**Optional medical assistance for families of children with disabilities.**

The department of human services shall establish and implement a buy-in program under the federal Family Opportunity Act enacted as part of the Deficit Reduction Act of 2005 [Pub. L. 109-171; 120 Stat. 4; 42 U.S.C 1396] to provide medical assistance and other health coverage options to families of children with disabilities and whose net income does not exceed two hundred percent of the federal poverty line.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,059,932, or so much of the sum as may be necessary, and the sum of \$1,673,835, not otherwise appropriated, or so much of the sum as may be necessary, from special funds derived from federal funds and other income, to the department of human services for the purpose of establishing and implementing a buy-in program to provide medical assistance and other health coverage options to families of children with disabilities and for implementing the waiver described in North Dakota Century Code section 50-24.1-26 to provide in-home services to children with extraordinary medical needs who would otherwise require hospitalization or nursing facility care, for the biennium beginning July 1, 2007, and ending June 30, 2009. The department of human services is authorized one full-time equivalent position for implementing the programs described in this Act.

Approved April 17, 2007  
Filed April 17, 2007

**CHAPTER 429****SENATE BILL NO. 2068**

(Human Services Committee)

(At the request of the Department of Human Services)

**GEROPSYCHIATRIC FACILITIES**

AN ACT to amend and reenact section 50-24.4-29 of the North Dakota Century Code, relating to establishment of a geropsychiatric unit within a nursing home; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 50-24.4-29 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.4-29. Limits on geropsychiatric facilities.** ~~The number of units within nursing homes which exclusively provide geropsychiatric services may not exceed one, and admission to a nursing home which exclusively provides geropsychiatric services may only be granted after the state hospital has performed an evaluation of the individual being admitted. Only two nursing homes within the state may have a unit that exclusively provides geropsychiatric services and no more than one geropsychiatric unit may be located in any one nursing home. Admission to one of the nursing homes that exclusively provides geropsychiatric services for the purpose of receiving geropsychiatric services may be granted only after the state hospital has performed an evaluation of the individual being admitted which indicates the individual is in need of nursing home geropsychiatric services. If at any time the number of approved geropsychiatric units in the state is below two, the department may select a geropsychiatric unit based on the experience, qualification, and capacity of the nursing homes that propose to provide geropsychiatric services. After a the geropsychiatric unit has units have been established within a the nursing home homes, the state hospital may not offer geropsychiatric services through a separate any other geropsychiatric unit.~~

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

Approved March 2, 2007  
Filed March 2, 2007

**CHAPTER 430****HOUSE BILL NO. 1422**

(Representatives Weisz, Pollert, Price)  
(Senators Hacker, Nething, Robinson)

**DRUG PRIOR AUTHORIZATION PROGRAM**

AN ACT to amend and reenact section 50-24.6-04 of the North Dakota Century Code, relating to the prior authorization program; to provide for review by the drug utilization review board; to provide for a report to the legislative council; to provide an effective date; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 50-24.6-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.6-04. (Effective through July 31, ~~2007~~ 2009) Prior authorization program.**

1. The department shall develop and implement a prior authorization program that meets the requirements of 42 U.S.C. 1396r-8(d) to determine coverage of drug products when a medical assistance recipient's health care provider prescribes a drug that is identified as requiring prior authorization. Authorization must be granted for provision of the drug if:
  - a. The drug not requiring prior authorization has not been effective, or with reasonable certainty is not expected to be effective, in treating the recipient's condition;
  - b. The drug not requiring prior authorization causes or is reasonably expected to cause adverse or harmful reactions to the health of the recipient; or
  - c. The drug is prescribed for a medically accepted use supported by a compendium or by approved product labeling unless there is a therapeutically equivalent drug that is available without prior authorization.
2. For any drug placed on the prior authorization program, the department shall provide medical and clinical criteria, cost information, and utilization data to the drug use review board for review and consideration. The board may consider department data and information from other sources to make a decision about placement of the drug on prior authorization.
3. Except for quantity limits that may be no less than the pharmaceutical manufacturer's package insert or AB-rated generic equivalent drug for which the cost to the state postrebate is less than the brand name drugs, in the aggregate, the department may not prior authorize or otherwise restrict single-source or brand name antipsychotic, antidepressant, or other medications used to treat mental illnesses,

such as schizophrenia, depression, or bipolar disorder, and drugs prescribed for the treatment of:

- a. Acquired immune deficiency syndrome or human immunodeficiency virus; and
  - b. Cancer.
4. The department may use contractors to collect and analyze the documentation required under this section and to facilitate the prior authorization program.
  5. The department shall consult with the board in the course of adopting rules to implement the prior authorization program. The rules must:
    - a. Establish policies and procedures necessary to implement the prior authorization program.
    - b. Develop a process that allows prescribers to furnish documentation required to obtain approval for a drug without interfering with patient care activities.
    - c. Allow the board to establish panels of physicians and pharmacists which provide expert guidance and recommendations to the board in considering specific drugs or therapeutic classes of drugs to be included in the prior authorization program.

**(Effective after July 31, 2007 2009) Prior authorization program.**

1. The department shall develop and implement a prior authorization program that meets the requirements of 42 U.S.C. 1396r-8(d) to determine coverage of drug products when a medical assistance recipient's health care provider prescribes a drug that is identified as requiring prior authorization. Authorization must be granted for provision of the drug if:
  - a. The drug not requiring prior authorization has not been effective, or with reasonable certainty is not expected to be effective, in treating the recipient's condition;
  - b. The drug not requiring prior authorization causes or is reasonably expected to cause adverse or harmful reactions to the health of the recipient; or
  - c. The drug is prescribed for a medically accepted use supported by a compendium or by approved product labeling unless there is a therapeutically equivalent drug that is available without prior authorization.
2. For any drug placed on the prior authorization program, the department shall provide medical and clinical criteria, cost information, and utilization data to the drug use review board for review and consideration. The board may consider department data and information from other sources to make a decision about placement of the drug on prior authorization.

3. The department may use contractors to collect and analyze the documentation required under this section and to facilitate the prior authorization program.
4. The department shall consult with the board in the course of adopting rules to implement the prior authorization program. The rules must:
  - a. Establish policies and procedures necessary to implement the prior authorization program.
  - b. Develop a process that allows prescribers to furnish documentation required to obtain approval for a drug without interfering with patient care activities.
  - c. Allow the board to establish panels of physicians and pharmacists which provide expert guidance and recommendations to the board in considering specific drugs or therapeutic classes of drugs to be included in the prior authorization program.

**SECTION 2. DRUG UTILIZATION REVIEW BOARD REVIEW - REPORT TO LEGISLATIVE COUNCIL.** During the 2007-08 interim, the drug utilization review board shall review the utilization, cost, and effectiveness of the drugs identified in subsection 3 of section 50-24.6-04 and make recommendations for managing the utilization of the identified drugs or of any other drugs for the conditions identified in that subsection. The drug utilization review board shall make semiannual reports of its progress and a final report, due by October 1, 2008, of its findings and recommendations for legislative changes to a committee of the legislative council, including any legislation necessary to make the suggested changes. The legislative council shall receive the board's report and report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Approved April 12, 2007  
Filed April 13, 2007



**CHAPTER 431****SENATE BILL NO. 2100**

(Judiciary Committee)

(At the request of the Department of Human Services)

**CHILD ABUSE REPORTS AND INVESTIGATIONS**

AN ACT to amend and reenact sections 50-25.1-02, 50-25.1-03, 50-25.1-03.1, 50-25.1-04.4, and 50-25.1-05 and subsection 4 of section 50-25.1-11 of the North Dakota Century Code, relating to definitions, persons required and permitted to report child abuse, persons allowed access to child fatality review panel records, who may investigate reports of child abuse or neglect when the accused is not a person responsible for the child's health or welfare, information available for use in assessments, and information that may be provided to a person who is the subject of a report alleging child abuse or neglect.

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

**SECTION 1. AMENDMENT.** Section 50-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-02. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "A person responsible for the child's welfare" means a person who has responsibility for the care or supervision of a child and who is the child's parent, an adult family member of the child, any member of the child's household, the child's guardian, or the child's foster parent; or an employee of, or any person providing care for the child in, a public or private school or nonresidential child care facility; an employee of a public or private residential home, institution, or agency; or a person responsible for the child's welfare in a residential setting.
2. "Abuse of alcohol", "alcohol abuse", or "abused alcohol" means alcohol abuse or dependence as defined in the current diagnostic and statistical manual published by the American psychiatric association or a maladaptive use of alcohol with negative medical, sociological, occupational, or familial effects.
3. "Abused child" means an individual under the age of eighteen years who is suffering from ~~serious physical harm or traumatic~~ abuse as defined in subdivision a of subsection 1 of section 14-09-22 caused by other than accidental means by a person responsible for the child's welfare; or who is suffering from or was subjected and "sexually abused child" means an individual under the age of eighteen years who is subjected by a person responsible for the child's welfare to any act in violation of sections 12.1-20-01 through 12.1-20-07, sections 12.1-20-11 through 12.1-20-12.2, or chapter 12.1-27.2.
4. "Assessment" means a factfinding process designed to provide information that enables a determination to be made that services are

required to provide for the protection and treatment of an abused or neglected child.

5. "Authorized agent" means the county social service board, unless another entity is designated by the department.
6. "Children's advocacy center" means a full or associate member of the national children's alliance which assists in the coordination of the investigation in response to allegations of child abuse by providing a dedicated child-friendly location at which to conduct forensic interviews, forensic medical examinations, and other appropriate services and which promotes a comprehensive multidisciplinary team response to allegations of child abuse. The team response may include forensic interviews, forensic medical examinations, mental health and related support services, advocacy, and case review.
7. "Citizen review committee" means a committee appointed by the department to review the department's provision of child welfare services.
8. "Department" means the department of human services or its designee.
9. "~~Harm~~" means ~~negative changes in a child's health which occur when a person responsible for the child's welfare:~~
  - a. ~~Inflicts, or allows to be inflicted, upon the child, physical or mental injury, including injuries sustained as a result of excessive corporal punishment; or~~
  - b. ~~Commits, allows to be committed, or conspires to commit, against the child, a sex offense as defined in chapter 12.1-20.~~
- ~~40.~~ 10. "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect where the ~~person~~ institution responsible for the child's welfare is ~~an employee of~~ a residential child care facility, a treatment or care center for mentally retarded, a public or private residential educational facility, a maternity home, or any residential facility owned or managed by the state or a political subdivision of the state.
- ~~44.~~ 10. "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 with the consent of the director of the county social service board. All team members, at the time of their selection and thereafter, must be staff members of the public or private agencies they represent or shall serve without remuneration. An attorney member of the child protection team may not be appointed to represent the child or the parents at any subsequent court proceeding nor may the child protection team be composed of fewer than three members. The department shall coordinate the organization of local child protection teams on a county or multicounty basis.
- ~~42.~~ 11. "Neglected child" means a deprived child as defined in chapter 27-20.

- 43- 12. "Prenatal exposure to a controlled substance" means use of a controlled substance as defined in chapter 19-03.1 by a pregnant woman for a nonmedical purpose during pregnancy as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery of the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance.
- 44- 13. "Protective services" includes services performed after an assessment of a report of child abuse or neglect has been conducted, such as social assessment, service planning, implementation of service plans, treatment services, referral services, coordination with referral sources, progress assessment, monitoring service delivery, and direct services.
- 45- 14. "State child protection team" means a multidisciplinary team consisting of the designee of the department and, where possible, of a physician, a representative of a child-placing agency, a representative of the state department of health, a representative of the attorney general, a representative of the superintendent of public instruction, a representative of the department of corrections and rehabilitation, one or more representatives of the lay community, and, as an ad hoc member, the designee of the chief executive official of any institution named in a report of institutional abuse or neglect. All team members, at the time of their selection and thereafter, must be staff members of the public or private agency they represent or shall serve without remuneration. An attorney member of the child protection team may not be appointed to represent the child or the parents at any subsequent court proceeding nor may the child protection team be composed of fewer than three persons.

**SECTION 2. AMENDMENT.** Section 50-25.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-03. Persons required and permitted to report - To whom reported.**

1. Any physician, nurse, dentist, optometrist, medical examiner or coroner, or any other medical or mental health professional, religious practitioner of the healing arts, schoolteacher or administrator, school counselor, addiction counselor, social worker, ~~day child care center or any other child care worker, foster parent,~~ police or law enforcement officer, juvenile court personnel, probation officer, division of juvenile services employee, or member of the clergy having knowledge of or reasonable cause to suspect that a child is abused or neglected, or has died as a result of abuse or neglect, shall report the circumstances to the department if the knowledge or suspicion is derived from information received by that person in that person's official or professional capacity. A member of the clergy, however, is not required to report such circumstances if the knowledge or suspicion is derived from information received in the capacity of spiritual adviser.
2. Any person having reasonable cause to suspect that a child is abused or neglected, or has died as a result of abuse or neglect, may report such circumstances to the department.

**SECTION 3. AMENDMENT.** Section 50-25.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-03.1. Photographs - X-rays - Medical tests.** Any person or official required to report under this chapter may cause to be taken color photographs of the areas of trauma visible on a child who ~~is the subject of a report~~ the person or official has knowledge or reasonable cause to suspect is an abused or neglected child and, if indicated by medical consultation, cause to be performed imaging studies, laboratory tests, colposcopies, and other medical tests of the child without the consent of the child's parents or guardian. All photographs and other visual images taken pursuant to this section must be taken by law enforcement officials, physicians, or medical facility professionals upon the request of any person or official required to report under this chapter. Photographs and visual images, or copies of them, must be sent to the department or the department's designee at the time the initial report of child abuse or neglect is made or as soon thereafter as possible. Imaging studies or copies of the studies and copies of results of other tests conducted under this section must be provided to the department or the department's designee upon request.

**SECTION 4. AMENDMENT.** Section 50-25.1-04.4 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-04.4. Child fatality review panel - Access to records.** Upon the request of a coroner or the presiding officer of a child fatality review panel, any hospital, physician, medical professional, medical facility, mental health professional, ~~or mental health facility, school counselor, or division of juvenile services employee~~ shall disclose all records of that entity with respect to any child who has or is eligible to receive a certificate of live birth and who has died. The person submitting the request shall reimburse the disclosing entity for the actual costs of assembling and disclosing the information.

**SECTION 5. AMENDMENT.** Section 50-25.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-05. Assessment.**

1. The department, in accordance with rules adopted by the department, immediately shall initiate an assessment, or cause an assessment, of any report of child abuse or neglect including, when appropriate, the assessment of 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.
2. If the report alleges a violation of a criminal statute involving sexual or physical abuse, the department and an appropriate law enforcement agency shall coordinate the planning and execution of their investigation efforts to avoid a duplication of factfinding efforts and multiple interviews. The department or the law enforcement agency may ~~refer~~:
  - a. Refer the case to a children's advocacy center for a forensic interview, forensic medical examination, and other services. ~~The department or appropriate law enforcement agency may interview~~
  - b. Interview, without the consent of a person responsible for the child's welfare, the alleged abused or neglected child and any other child who currently resides or who has resided with the

person responsible for the child's welfare or the alleged perpetrator. ~~The department or law enforcement agency may conduct~~

- c. Conduct the interview at a school, child care facility, or any other place where the alleged abused or neglected child or other child is found.
3. Except as prohibited under title 42, Code of Federal Regulations, part 2, a regional human service center shall disclose to the department or the department's authorized agent, upon request, the records of a patient or client which are relevant to an assessment of reported child abuse or neglect.

**SECTION 6. AMENDMENT.** Subsection 4 of section 50-25.1-11 of the North Dakota Century Code is amended and reenacted as follows:

4. Any person who is the subject of a report; provided, however, that the identity of persons reporting or supplying information under this chapter is protected.

Approved April 26, 2007

Filed April 27, 2007

**CHAPTER 432****SENATE BILL NO. 2069**

(Human Services Committee)

(At the request of the Department of Human Services)

**CHIP ELIGIBILITY**

AN ACT to amend and reenact subsection 1 of section 50-29-02 of the North Dakota Century Code, relating to determination of self-employment income for eligibility for the children's health insurance program.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 50-29-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Prepare, submit, and implement the plan that includes eligibility determinations for self-employed applicants, where adjusted gross income or loss means the adjusted gross income or loss as computed for an individual for federal income tax purposes under the Internal Revenue Code, based on the lower of either:
  - a. The previous one year of adjusted gross income or loss from the business, or if the previous year's federal income tax return has not been filed, from the year prior to that year, less any earned or unearned income on the tax return, plus any current earned or unearned income; or
  - b. The average of the previous three years of adjusted gross income or loss from the business, or if the previous year's federal income tax return has not been filed or the business has been in existence for fewer than three years, from the federal income tax returns from the previous three years that have been filed for the business, less the average of earned or unearned income for each of the ~~previous three~~ years for which federal income tax returns have been filed, plus any current earned or unearned income;

If the most recently available federal income tax return does not accurately predict income because the business has been recently established, has been terminated, has been subjected to a severe change such as an uninsured loss or a decrease or increase in the size of the operation, income statements or any other reliable information may be used to compute self-employment income;

Approved March 2, 2007  
Filed March 2, 2007

**CHAPTER 433****SENATE BILL NO. 2167**

(Senators Lyson, Dever, Grindberg)

(Representative Carlisle)

**ASSISTED LIVING FACILITY LICENSURE**

AN ACT to amend and reenact section 50-32-02.1 of the North Dakota Century Code, relating to licensure requirements of assisted living facilities; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 50-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-32-02.1. Continuation of existing licenses.**

1. An assisted living facility that possessed a valid license issued by the department of human services before August 1, 2005, may not be subsequently denied a license by the department of human services merely due to failure to meet the requirements of sections 23-09-01, 50-32-01, and 50-32-02 provided that the assisted living facility meets all other licensing requirements.
2. If there is a change in ownership of an assisted living facility that possessed a valid license issued before August 1, 2005, the department of human services shall allow a continuance of the exception to the licensure requirements under subsection 1 for the new owner. The continuance provided under this subsection applies to the first change in ownership after July 31, 2005, and does not apply to any subsequent change in ownership.

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

Approved March 2, 2007

Filed March 2, 2007

# SALES AND EXCHANGES

## CHAPTER 434

### SENATE BILL NO. 2266

(Senators Nething, Taylor)  
(Representatives DeKrey, Dosch)

#### CHECK ENDORSEMENT ADVERTISING OBLIGATION

AN ACT to create and enact sections 51-15-02.1 and 51-15-02.2 of the North Dakota Century Code, relating to an obligation to advertise upon endorsement of a check and to solicitations of payments due; and to declare an emergency.

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

**SECTION 1.** Section 51-15-02.1 of the North Dakota Century Code is created and enacted as follows:

**51-15-02.1. Use of check endorsements for advertising obligations prohibited.** It is a deceptive act or practice in violation of this chapter for a person to offer, through the mail or by other means, a check that contains an obligation to advertise with a person upon the endorsement of a check.

**SECTION 2.** Section 51-15-02.2 of the North Dakota Century Code is created and enacted as follows:

**51-15-02.2. Solicitation of payment by bill, invoice, or statement of account due.** It is a deceptive act or practice in violation of this chapter for a person to send, deliver, or transmit a bill, an invoice, or a statement of account due, or a writing that could reasonably be interpreted as a bill, an invoice, or a statement of account due, to solicit payment of money by another person for goods not yet ordered or for services not yet performed and not yet ordered.

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

Approved April 4, 2007  
Filed April 5, 2007



**CHAPTER 435****SENATE BILL NO. 2040**

(Legislative Council)  
(Judicial Process Committee)

**DECEPTIVE SALES PRACTICES**

AN ACT to create and enact a new section to chapter 51-15 of the North Dakota Century Code, relating to facilitating and assisting deceptive acts or practices; to amend and reenact section 51-15-09 of the North Dakota Century Code, relating to barred claims for relief; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 51-15 of the North Dakota Century Code is created and enacted as follows:

**Facilitating and assisting.** It is a deceptive act or practice in violation of this chapter for any person to provide assistance or support to any person engaged in any act or practice in violation of this chapter when the person providing assistance or support knows or consciously avoids knowing that the other person is engaged in an act or practice in violation of this chapter. This section does not authorize a private claim for relief for a violation of this section and no entity other than the attorney general may enforce this section.

**SECTION 2. AMENDMENT.** Section 51-15-09 of the North Dakota Century Code is amended and reenacted as follows:

**51-15-09. Claims not barred.** The provisions of ~~The provisions of~~ Except as provided in section 1 of this Act, this chapter ~~de~~ does not bar any claim for relief by any person against any person who has acquired any moneys or property by means of any practice declared to be unlawful in this chapter. If the court finds the defendant knowingly committed the conduct, the court may order that the person commencing the action recover up to three times the actual damages proven and the court must order that the person commencing the action recover costs, disbursements, and actual reasonable attorney's fees incurred in the action.

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

Approved April 26, 2007  
Filed April 27, 2007

**CHAPTER 436****HOUSE BILL NO. 1507**

(Representatives Thoreson, Kasper, L. Meier, Ruby)  
(Senators Flakoll, Hacker)

**COMPUTER AND INTERNET FRAUD**

AN ACT to create and enact a new section to chapter 44-04 and a new section to chapter 51-27 of the North Dakota Century Code, relating to exempting electronic mail addresses and telephone numbers from open records requirements and to computer and internet fraud; to amend and reenact section 51-27-01 of the North Dakota Century Code, relating to definitions; and to provide a penalty.

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

**SECTION 1.** A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

**Electronic mail addresses and telephone numbers exempt.** The electronic mail address or telephone number of an individual which is provided to a public entity for the purpose of or in the course of communicating with that public entity is an exempt record. This section may not be used to shield the identity of the individual communicating with the public entity.

**SECTION 2. AMENDMENT.** Section 51-27-01 of the North Dakota Century Code is amended and reenacted as follows:

**51-27-01. (Contingent expiration date - See note) Definitions.** In this chapter, unless the context otherwise requires:

1. "Assist the transmission" means actions taken by a person to provide substantial assistance or support that enables any person to formulate, compose, send, originate, initiate, or transmit a commercial electronic mail message when the person providing the assistance knows or consciously avoids knowing that the initiator of the commercial electronic mail message is engaged, or intends to engage, in any practice that violates chapter 51-15.
2. "Commercial electronic mail message" means an electronic mail message sent to promote real property, goods, or services for sale or lease. The term does not mean an electronic mail message to which an interactive computer service provider has attached an advertisement in exchange for free use of an electronic mail account if the sender has agreed to such an arrangement.
3. "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.
4. "Identifying information" means any information that can be used to access an individual's financial account or to obtain goods and services, including an individual's address, birth date, social security number, driver's license number, nondriver governmental identification number,

telephone number, bank account number, student identification, credit or debit card number, personal identification number, unique biometric data, employee or payroll number, automated or electronic signature, computer image, photograph, screen name, or password. The term does not include information that is lawfully obtained from publicly available sources or from federal, state, or local government records lawfully made available to the general public.

5. "Initiate the transmission" refers to the action by the original sender of an electronic mail message, not to the action by any intervening interactive computer service that may handle or retransmit the message, unless the intervening interactive computer service assists in the transmission of an electronic mail message when the interactive computer service knows, or consciously avoids knowing, that the person initiating the transmission is engaged, or intends to engage, in any act or practice that violates chapter 51-15.
- ~~5.~~ 6. "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a service or system that provides access to the internet and systems operated or services offered by libraries and educational institutions.
- ~~6.~~ 7. "Internet domain name" refers to a globally unique, hierarchical reference to an internet host or service, assigned through centralized internet naming authorities, comprising a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.
8. "Web page" means a location that has a single uniform resource locator with respect to the world wide web or another location that can be accessed on the internet.

**SECTION 3.** A new section to chapter 51-27 of the North Dakota Century Code is created and enacted as follows:

**Fraudulent or misleading communications - Penalty.**

1. A person is guilty of a class C felony if, with intent to defraud or injure an individual, or with knowledge that the person is facilitating a fraud or injury to be perpetrated by any other person:
  - a. The actor makes any communication that is not true and is calculated to mislead by purporting to be by or on behalf of another person without the authority or approval of that person; and
  - b. The actor uses that communication to induce, request, or solicit the individual to provide property or identifying information.
2. A person is guilty of a class C felony if, with intent to defraud or injure an individual, or with knowledge that a person is facilitating a fraud or injury to be perpetrated by any other person:
  - a. The actor creates or operates a web page that falsely represents the actor as being associated with another person without the authority or approval of that person and the web page may induce

a user of the internet to provide property or identifying information;  
or

- b. The actor alters a setting on a user's computer or similar device or software program through which the user may search the internet, the alteration causes the user to view a communication that falsely represents the actor as being associated with another person, and the communication has been created or is operated without the authority or approval of the other person and induces, requests, or solicits the user to provide property or identifying information.

Approved April 13, 2007

Filed April 16, 2007

**CHAPTER 437****SENATE BILL NO. 2195**  
(Senators Hacker, Lindaas, Warner)  
(Representatives Dahl, Dosch, Hawken)**TELEPHONE SOLICITATIONS**

AN ACT to amend and reenact section 51-28-01 of the North Dakota Century Code, relating to telephone solicitations; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 51-28-01 of the North Dakota Century Code is amended and reenacted as follows:

**51-28-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires, the terms shall have the meanings as follows:

1. "Automatic dialing-announcing device" means a device that selects and dials telephone numbers and that, working alone or in conjunction with other equipment, disseminates a prerecorded or synthesized voice message to the telephone number called.
2. "Caller" means a person, corporation, firm, partnership, association, or legal or commercial entity that attempts to contact, or that contacts, a subscriber in this state by using a telephone or a telephone line.
3. "Caller identification service" means a telephone service that permits telephone subscribers to see the telephone number of incoming telephone calls.
4. "Established business relationship" means a relationship between a seller and consumer based on a free trial newspaper subscription or on the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the twenty-four months immediately preceding the date of a telemarketing call.
5. "Message" means any telephone call, including voice, text, or other electronic communication, regardless of its content.
6. "Subscriber" means a person who has subscribed to a residential telephone services from a telephone company line or the other persons living or residing with the subscribing person; ~~or a person who has subscribed to wireless or mobile telephone services.~~
7. "Telephone line" means a telephone service to a subscriber, regardless of the technology used to provide such service, including traditional wireline or cable telephone service; cellular, broadband PCS, or other wireless telephone service; microwave, satellite, or other terrestrial phone service; and voice over internet protocol telephone service.

8. "Telephone solicitation" means any voice, text, or other electronic communication over a telephone line for the purpose of encouraging charitable contributions, or the purchase or rental of, or investment in, property, goods, services, or merchandise, including as defined in subsection 3 of section 51-15-03, whether the communication is made by a live operator, through the use of an automatic dialing-announcing device, or by other means. Telephone solicitation does not include communications:
- a. To any subscriber with that subscriber's prior express written request, consent, invitation, or permission.
  - b. By or on behalf of any person with whom the subscriber has an established personal or business relationship.
  - c. By or on behalf of a charitable organization that is exempt from federal income taxation under section 501 of the Internal Revenue Code, but only if the following applies:
    - (1) The telephone call is made by a volunteer or employee of the charitable organization; and
    - (2) The person who makes the telephone call immediately discloses the following information upon making contact with the consumer:
      - (a) The person's true first and last name; and
      - (b) The name, address, and telephone number of the charitable organization.
  - d. By or on behalf of any person whose exclusive purpose is to poll or solicit the expression of ideas, opinions, or votes, unless the communication is made through an automatic dialing-announcing device in a manner prohibited by section 51-28-02.
  - e. By the individual soliciting without the intent to complete, and who does not in fact complete, the sales presentation during the call, but who will complete the sales presentation at a later face-to-face meeting between the individual solicitor or person who makes the initial call and the prospective purchaser.
  - f. By or on behalf of a political party, candidate, or other group with a political purpose, as defined in section 16.1-08.1-01.

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

Approved April 4, 2007  
Filed April 5, 2007

## CHAPTER 438

### HOUSE BILL NO. 1417

(Representatives Koppelman, Gulleson, Thoreson)  
(Senators Dever, Triplett)

## CONSUMER CREDIT REPORT FREEZES

AN ACT to create and enact chapter 51-33 of the North Dakota Century Code, relating to security freezes on consumer credit reports; to provide a penalty; to provide an effective date; and to declare an emergency.

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

**SECTION 1.** Chapter 51-33 of the North Dakota Century Code is created and enacted as follows:

**51-33-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Consumer report" has the same meaning as provided in 15 U.S.C. 1681(a)(d).
2. "Consumer reporting agency" means any person that for monetary fees or dues, or on a cooperative nonprofit basis, regularly engages in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.
3. "Proper identification" means information sufficient to verify identity. Only if the consumer is unable to sufficiently provide self-identifying information may a consumer reporting agency require additional information concerning the consumer's employment and personal or family history in order to verify the consumer's identity.
4. "Security freeze" means a notice placed in a consumer's consumer report, at the request of the consumer and subject to certain exceptions, that prohibits the consumer reporting agency from releasing the consumer credit file or any information derived from it, without the express authorization of the consumer. If a security freeze is in place, information from a consumer's consumer credit file may not be released to a third party without prior express authorization from the consumer. A security freeze does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer report.
5. "Victim of identity theft" means a consumer who has a copy of a valid police report, investigative report, or complaint to law enforcement evidencing that the consumer has alleged to be a victim of identity theft.

**51-33-02. Right to obtain security freeze.** A consumer may elect to place a security freeze on the consumer's consumer credit file by making a request to a consumer reporting agency. The consumer may make the request:

1. By mail;
2. By telephone by providing proper identification or certain personal identification required by the consumer reporting agency; or
3. Directly to the consumer reporting agency through a secure electronic mail connection if the connection is made available by the consumer reporting agency.

**51-33-03. Response of consumer reporting agency.**

1. A consumer reporting agency shall place a security freeze on a consumer's consumer credit file no later than three business days after receiving from the consumer a request under section 51-33-02 which includes proper identification. If a victim of identity theft requests a security freeze, a consumer reporting agency shall place a security freeze on the consumer's credit report no later than forty-eight hours after receiving:
  - a. A notice under section 51-33-02; and
  - b. A copy of a valid police report, investigative report, or complaint to law enforcement evidencing the identity theft victim has alleged being a victim of identity theft. The copy may be transmitted to the consumer reporting agency by mail, facsimile, or secure electronic mail connection, if the connection is made available by the consumer reporting agency.
2. Effective August 1, 2009, if a victim of identity theft requests a security freeze, a consumer reporting agency shall place a security freeze on the consumer's credit report no later than twenty-four hours after receiving:
  - a. A notice under section 51-33-02; and
  - b. A copy of a valid police report, investigative report, or complaint to law enforcement evidencing the identity theft victim has alleged being a victim of identity theft. The copy may be transmitted to the consumer reporting agency by mail, facsimile, or secure electronic mail connection, if the connection is made available by the consumer reporting agency.
3. The consumer reporting agency, within five business days after receiving the request, shall send a written confirmation of the security freeze to the consumer and provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of the consumer's consumer report for a specific party or period of time.
4. When a consumer requests a security freeze, the consumer reporting agency shall disclose the process of placing and temporarily lifting a freeze, including the process for allowing access to information from the consumer's consumer report for a specific party or period of time while the freeze is in place.



**51-33-04. Temporary lifting or permanent removal of the freeze.**

1. If the consumer wishes to allow the consumer's consumer credit file to be accessed for a specific party or period of time while a freeze is in place, the consumer shall contact the consumer reporting agency, request that the freeze be temporarily lifted, and provide the following:
  - a. Proper identification;
  - b. The unique personal identification number or password provided by the credit reporting agency under section 51-33-03;
  - c. The proper information regarding the third party who is to receive the consumer report or access the credit file or the time period for which the report or credit file is to be available to users of the consumer credit file; and
  - d. A fee if applicable.
2. A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a consumer credit file under this section shall comply with the request no later than three business days after receiving the request.
3. A consumer reporting agency may develop procedures involving the use of telephone, fax, internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a consumer report under this section in an expedited manner, with the goal of processing a request within fifteen minutes after the request.
4. A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer report only in the following cases:
  - a. Upon consumer request under this section; or
  - b. When the consumer credit file was frozen due to a material misrepresentation of fact by the consumer. When a consumer reporting agency intends to remove a freeze on a consumer credit file under this section, the consumer reporting agency shall notify the consumer in writing at least three business days prior to removing the freeze on the consumer credit file.
5. A security freeze remains in place until the consumer requests that the security freeze be removed. A consumer reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer, who provides both of the following:
  - a. Proper identification; and
  - b. The unique personal identification number or password provided by the credit reporting agency under section 51-33-03.

**51-33-05. Response by third party to denial of access.** When a third party requests access to a consumer report on which a security freeze is in effect, and this request is in connection with an application for credit or the opening of an

account and the consumer does not allow the consumer's consumer report to be accessed for that specific party or period of time, the third party may treat the application as incomplete.

**51-33-06. Nonapplicability.** Sections 51-33-01 through 51-33-05 do not apply to the use of a consumer report by any of the following:

1. A person or entity, or a subsidiary, affiliate, or agent of that person or entity, or an assignee of a financial obligation owing by the consumer to that person or entity, or a prospective assignee of a financial obligation owing by the consumer to that person or entity in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument. For purposes of this subsection, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;
2. A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under section 51-33-04 for purposes of facilitating the extension of credit or other permissible use;
3. Any federal, state, or local governmental entity, including a law enforcement agency, court, or its agents or assigns;
4. A private collection agency acting under a court order, warrant, or subpoena;
5. Any person or entity for the purposes of prescreening as provided for by the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq.;
6. Any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed;
7. Any person or entity for the purpose of providing a consumer with a copy of the consumer's consumer report upon the consumer's request;
8. Any person or entity for use in setting or adjusting a rate, adjusting a claim, or underwriting for insurance purposes. This exemption does not determine or affect whether these uses are permitted under other law; and
9. A consumer reporting agency for its data base or file that consists entirely of information concerning, and used solely for, one or more of the following:
  - a. Criminal record information;
  - b. Tenant screening;
  - c. Employment screening; and
  - d. Fraud prevention or detection.

**51-33-07. Information to government agencies not affected.** Sections 51-33-01 through 51-33-06 do not prohibit a consumer reporting agency from furnishing to a governmental agency a consumer's name, address, former address, places of employment, or former places of employment.

**51-33-08. Fees.**

1. A consumer reporting agency may charge a fee not to exceed five dollars for placing or temporarily lifting a security freeze unless:
  - a. The consumer is a victim of identity theft; and
  - b. The consumer provides, or has already provided in connection with the security freeze, the consumer reporting agency with a valid copy of a police report or a police case number documenting the identity theft, investigative report, or complaint to a law enforcement agency.
2. In addition to the charge, if any, permitted under this section, a consumer may be charged no more than five dollars if the consumer fails to retain the original personal identification number given to the consumer by the agency, but the consumer may not be charged for a one-time reissue of the same or a new personal identification number. The consumer may be charged no more than five dollars for subsequent instances of loss of the personal identification number. No other fees may be imposed in connection with the security freeze.

**51-33-09. Changes to information - Written confirmation required.** If a security freeze is in place, a consumer reporting agency may not change any of the following official information in a consumer report without sending a written confirmation of the change to the consumer within thirty days of the change being posted to the consumer's file: name, date of birth, social security number, and address. Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and to the former address.

**51-33-10. Security freeze not applicable to certain consumer reporting agencies.** A consumer reporting agency is not required to place a security freeze in a consumer credit file under this chapter if it acts only as a reseller of credit information by assembling and merging information contained in the data base of another consumer reporting agency or multiple consumer reporting agencies and does not maintain a permanent data base of credit information from which new consumer reports are produced. However, a consumer reporting agency must honor any security freeze placed on a consumer credit file by another consumer reporting agency.

**51-33-11. Exempt entities.** The following entities are not required to place a security freeze on a consumer credit file under this chapter:

1. A check services or fraud prevention services company that issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments; and

2. A deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer's request for a deposit account at the inquiring bank or financial institution.

**51-33-12. Notice of rights.** At any time that a consumer is required to receive a summary of rights required under 15 U.S.C. 1681g or under North Dakota law, the following notice shall be included:

North Dakota Consumers Have the Right to Obtain a Security Freeze

You may obtain a security freeze on your consumer credit file at no charge to protect your privacy and ensure that credit is not granted in your name without your knowledge. You have a right to place a "security freeze" on your consumer credit file pursuant to North Dakota law.

The security freeze will prohibit a consumer reporting agency from releasing any information in your consumer credit file without your express authorization or approval.

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. When you place a security freeze on your credit file, within five business days you will be provided a personal identification number or password to use if you choose to remove the freeze on your credit file or to temporarily authorize the release of your credit report or credit score for a specific party, parties, or period of time after the freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide all of the following:

1. The unique personal identification number or password provided by the consumer reporting agency.
2. Proper identification to verify your identity.
3. The proper information regarding the third party or parties who are to receive the credit report or the period of time for which the report shall be available to users of the credit report.

A consumer reporting agency that receives a request from a consumer to lift temporarily a freeze shall comply with the request no later than three business days after receiving the request.

A consumer reporting agency may charge you up to five dollars each time you freeze or temporarily lift the freeze, except a consumer reporting agency may not charge any amount to a victim of identity theft who has submitted a copy of a valid investigative report or complaint to a law enforcement agency about the unlawful use of the victim's information by another person.

A security freeze does not apply to circumstances where you have an existing account relationship and a copy of your report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control, or similar activities.

If you are actively seeking a new credit, loan, utility, or telephone account, you should understand that the procedures involved in lifting a security freeze may slow your own applications for credit. You should plan ahead and lift a freeze - either completely if you are shopping around, or specifically for a certain creditor - with enough advance notice before you apply for new credit for the lifting to take effect.

You have a right to bring a civil action against someone who violates your rights under the credit reporting laws. The action can be brought against a consumer reporting agency or a user of your credit report.

#### **51-33-13. Private enforcement.**

1. If a consumer reporting agency erroneously releases a consumer's credit file or any information derived from the file, the consumer reporting agency shall send written notification to the affected consumer within five business days following discovery or notification of the erroneous release, including specificity as to the information released and the third-party recipient of the information. In addition, the affected consumer in a civil action against the consumer reporting agency may recover:
  - a. Injunctive relief to prevent or restrain further violation of the security freeze;
  - b. The greater of actual damages or two thousand dollars in civil penalties for each violation; and
  - c. Reasonable expenses, court costs, investigative costs, and attorney's fees.
2. Each violation of the security freeze shall be counted as a separate incident for purposes of imposing penalties under this section.

**51-33-14. Enforcement by attorney general - Powers - Remedies - Separate violations - Venue.** The attorney general may enforce this chapter. In enforcing this chapter, the attorney general has all the powers provided in chapter 51-15 and may seek all the remedies in chapter 51-15. A violation of this chapter is a violation of chapter 51-15. Each violation of the security freeze shall be counted as a separate violation. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties under chapter 51-15 and as otherwise provided by law. The attorney general may bring an action pursuant to this section in either the county of the consumer's residence or Burleigh County.

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective on June 1, 2007.

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

Approved April 23, 2007  
Filed April 24, 2007

**CHAPTER 439****SENATE BILL NO. 2255**  
(Senators Olafson, Hacker, Lindaas)  
(Representatives Gulleason, Koppelman)**FRAUDULENT PROCUREMENT OF TELEPHONE  
RECORDS**

AN ACT to create and enact chapter 51-34 of the North Dakota Century Code, relating to the unauthorized or fraudulent procurement, sale, or receipt of telephone records; to provide a penalty; to provide an effective date; and to declare an emergency.

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

**SECTION 1.** Chapter 51-34 of the North Dakota Century Code is created and enacted as follows:

**51-34-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Customer" means the person who subscribes to telephone service from a telephone company or in whose name such telephone service is listed and to whom the telephone record pertains.
2. "Procure" in regard to a telephone record means to obtain by any means, whether electronically, in writing, or in oral form, with or without consideration.
3. "Telephone" means any device used by a person for voice or other electronic communications, in connection with the services of a telephone company, whether such voice or other electronic communications are transmitted in analog, data, or any other form.
4. "Telephone company" means any person that provides commercial telephone services to a customer, regardless of the communications technology used to provide such service, including traditional wireline or cable telephone service; cellular, broadband PCS, or other wireless telephone service; microwave, satellite, or other terrestrial telephone service; and voice over internet telephone service.
5. "Telephone record" means information retained by a telephone company that relates to the telephone number dialed by the customer or other person using the customer's telephone with such customer's permission, the incoming number of a call directed to a customer or other person using the customer's telephone with such customer's permission, or other data related to such call typically contained on a customer's telephone bill, including the times the call started and ended, the duration of the call, the time the call was made, and any charges applied. A telephone record does not include information collected and retained by a customer utilizing caller identification or similar technology or include a carrier network record.

**51-34-02. Unauthorized or fraudulent procurement, sale, or receipt of telephone records prohibited - Criminal penalties - Restitution.**

1. A person may not:
  - a. Procure, attempt to procure, solicit, or conspire with another to procure, a telephone record of any resident of this state without the authorization of the customer or by fraudulent, deceptive, or false means;
  - b. Sell, or attempt to sell, a telephone record of any resident of this state without the customer's authorization; or
  - c. Receive a telephone record of any resident of this state when such record has been obtained without the customer's authorization or by fraudulent, deceptive, or false means.
2. Any person who knowingly violates this section is guilty of a class C felony.
3. In addition to any other punishment, a person found guilty of an offense under this section shall make restitution for any financial loss sustained by the customer or any other person who suffered financial loss as the direct result of the offense.

**51-34-03. Jurisdiction - Conduct outside this state - Venue - Multiple offenses.**

1. Notwithstanding section 29-03-01.1, a person who, while outside this state, engages in conduct in violation of section 51-34-02 is subject to prosecution under this chapter in the courts of this state. Except as provided in subsection 2, the venue is in the county in which the customer or victim resides or any other county in which any part of the crime occurred.
2. When a person commits violations of this section in more than one county involving either one or more customers or victims or the commission of acts constituting an element of the offense, the multiple offenses may be consolidated for commencement of prosecution in any county where one of the offenses was committed.

**51-34-04. Nonapplicability to valid legal process and law enforcement.**

1. This chapter does not apply to any person acting pursuant to a valid court order, warrant, or subpoena, a subpoena by the attorney general pursuant to this chapter or chapter 51-15, or other valid legal process.
2. This chapter does not prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, to obtain telephone records in connection with the performance of the official duties of the agency as authorized by law.

**51-34-05. Permitted use by telephone companies.**

1. This chapter does not prohibit a telephone company from obtaining, using, disclosing, or permitting access to any telephone record, either directly or indirectly through its agents or contractors:
  - a. As otherwise authorized by law;
  - b. With the lawful consent of the customer;
  - c. As may be necessarily incident to the rendition of the service or to the protection of the rights or property of the telephone company, or to protect the customer of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services;
  - d. To a governmental entity, if the telephone company reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information; or
  - e. To the national center for missing and exploited children, in connection with a report submitted thereto under section 227 of the Victims of Child Abuse Act of 1990.
2. This chapter does not apply to or expand upon the obligations and duties of any telephone company to protect telephone records beyond those otherwise established by federal law or state law or both as set forth in section 51-34-06.
3. This chapter does not apply to a telephone company, and its agents or representatives, who reasonably and in good faith act pursuant to subsection 2, notwithstanding any later determination that the action was not in fact authorized.

**51-34-06. Information security - No private claim for relief.**

1. Telephone companies that maintain telephone records of a resident of this state shall establish reasonable procedures to protect against unauthorized or fraudulent disclosure of the records which could result in substantial harm or inconvenience to a customer.
2. This section does not authorize a private claim for relief for a violation of this section.

**51-34-07. Deceptive act or practice - Enforcement - Powers - Remedies -**

**Venue.** The state's attorney or attorney general may enforce this chapter. In enforcing this chapter, the attorney general has all the powers provided in chapter 51-15 and may seek all the remedies in chapter 51-15. A violation of this chapter is a violation of chapter 51-15. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties under chapter 51-15 and as otherwise provided by law. The attorney general may bring an action pursuant to this section in either the county of the customer's residence or Burleigh County.



**SECTION 2. EFFECTIVE DATE.** This Act becomes effective on June 1, 2007.

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

Approved April 4, 2007  
Filed April 5, 2007

# SOCIAL SECURITY

## CHAPTER 440

### HOUSE BILL NO. 1057

(Industry, Business and Labor Committee)  
(At the request of Job Service North Dakota)

## UNEMPLOYMENT REPORT ELECTRONIC FILING

AN ACT to create and enact a new section to chapter 52-04 of the North Dakota Century Code, relating to electronic filing of employer unemployment contribution and wage reports and electronic payment of contributions; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 52-04 of the North Dakota Century Code is created and enacted as follows:

**Electronic filing of contribution and wage reports - Electronic payment of contributions - Assessments.** An employer that employs more than ninety-nine employees at any time shall file contribution and wage reports by an electronic method approved by the bureau beginning with the calendar quarter in which the employer first employs more than ninety-nine employees. An employer that does not comply with the requirements to file reports electronically is deemed to have failed to submit any employer's contribution and wage report as provided in section 52-04-11. All payers making payments on behalf of more than one employer shall make all payments electronically.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2007.

Approved March 2, 2007  
Filed March 2, 2007

**CHAPTER 441****HOUSE BILL NO. 1413**

(Representatives Dosch, Keiser)

**UNEMPLOYMENT INSURANCE TAX RATE  
DETERMINATION**

AN ACT to amend and reenact subsections 5 and 6 of section 52-04-05 and subsections 2, 3, and 6 of section 52-04-06 of the North Dakota Century Code, relating to determination of unemployment insurance tax rates.

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

<sup>208</sup> **SECTION 1. AMENDMENT.** Subsections 5 and 6 of section 52-04-05 of the North Dakota Century Code are amended and reenacted as follows:

## 5. Rates must be determined as follows:

- a. The income needed to pay benefits for the calendar year must be divided by the estimated taxable wages for the calendar year. The result rounded to the next higher one one-hundredth of one percent is the average required rate needed to pay benefits.
- b. If the positive employer maximum rate necessary to generate the amount of income needed to pay benefits is at least one percent, the positive employer minimum rate necessary to generate the amount of income necessary to pay benefits is the foregoing positive employer maximum rate, minus nine-tenths of one percent. If the positive employer maximum rate necessary to generate the amount of income needed to pay benefits is less than one percent, the range for the positive employer minimum rate necessary to generate the amount of income needed to pay benefits must be at least one-tenth of one percent and must be less than two-tenths of one percent, with the positive employer maximum rate necessary to generate the amount of income needed to pay benefits equal to the positive employer maximum rate, as used in this subsection, minus a multiple of the increment one-tenth of one percent as provided in subsection 2 of section 52-04-06 to fall within the range described above. Within the table of rate schedules to be utilized for each calendar year to establish the tax rates necessary to generate the amount of income needed to pay benefits, a rate schedule may not be used if it would generate less income than any rate schedule preceding it on the table of rate schedules. The positive employer minimum rate in the first rate schedule of the table of rate schedules is one-hundredth of one percent. The positive employer minimum rate in each subsequent rate schedule of the table of rate schedules is the previous rate schedule's

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<sup>208</sup> Section 52-04-05 was also amended by section 1 of Senate Bill No. 2035, chapter 442.

~~positive employer minimum rate plus one-hundredth of one percent.~~ The negative employer minimum rate needed to generate the amount of income needed to pay benefits is the positive employer ~~maximum~~ minimum rate as described in this subsection plus ~~five and one-tenth~~ six percent.

- c. The positive employer ~~maximum~~ minimum rate necessary to generate the amount of income needed to pay benefits must be set so that all the rates combined generate the average required rate for income needed to pay benefits, multiplied by the ratio, calculated under subdivision d, needed to reach the solvency balance. The negative employer maximum rate necessary to generate the amount of income needed to pay benefits is the negative employer minimum rate necessary to generate the amount of income needed to pay benefits plus three and six-tenths percent. However, the maximum rate must be at least five and four-tenths percent.
  - d. The tax rate necessary to generate the amount of income needed to reach a solvency balance must be calculated by dividing the solvency balance by the amount of income estimated as needed to pay benefits and multiplying the resulting ratio times each rate, within the positive and negative rate arrays, as determined under this section to meet the average required rate needed to pay benefits as defined by subdivision a. The ratio calculated under this subdivision must also be multiplied by any rate calculated as required by subsection 6 to arrive at a final rate for a new business. All results calculated under this subdivision must be rounded to the nearest one-hundredth of one percent.
6. a. Except as otherwise provided in this subsection, an employer's rate may not be less than the negative employer minimum rate for a calendar year unless the employer's account has been chargeable with benefits throughout the thirty-six-consecutive-calendar-month period ending on September thirtieth of the preceding calendar year. If an employer in construction services has not been subject to the law as required, that employer qualifies for a reduced rate if the account has been chargeable with benefits throughout the twenty-four-consecutive-calendar-month period ending September thirtieth of the preceding calendar year. If an employer in nonconstruction services has not been subject to the law as required, the employer in nonconstruction services qualifies for a reduced rate if the account has been chargeable with benefits throughout the twelve-consecutive-calendar-month period ending September thirtieth of the preceding calendar year. The executive director may provide any negative employer whose contributions paid into the trust fund are greater than the benefit charges against that employer's account, for a minimum of three consecutive years immediately preceding the computation date or subject to the law as required, with up to a thirty percent reduction to that employer's rate for any year if that employer has in place a plan approved by the bureau which addresses substantive changes to that employer's business operation and ensures that any rate reduction provided will not put the employer account back into a negative status.

- b. An employer that does not qualify under subdivision a is subject to a rate determined as follows:
- (1) For each calendar year new employers must be assigned a rate that is ~~one hundred fifty ninety~~ percent of the positive employer maximum rate or a rate of one percent, whichever is greater, unless the employer is classified in construction services. However, an employer must be assigned within the negative employer rate ranges for any year if, as of the computation date, the cumulative benefits charged to that employer's account equal or exceed the cumulative contributions paid on or before October thirty-first with respect to wages paid by that employer before October first of that year.
  - (2) New employers in construction services must be assigned the negative employer maximum rate.
  - (3) Assignment by the bureau of an employer's industrial classification for the purposes of this section must be the three-digit major group provided in the North American industrial classification system manual, in accordance with established classification practices found in the North American industrial classification system manual, issued by the executive office of the president, office of management and budget. Employers who are liable for coverage before August 1, 2001, remain under an industrial classification under the two-digit major group provided in the standard industrial classification manual unless they are classified in the construction industry within the standard industrial classification code.

**SECTION 2. AMENDMENT.** Subsections 2, 3, and 6 of section 52-04-06 of the North Dakota Century Code are amended and reenacted as follows:

2. For each calendar year the bureau shall establish a schedule of positive employer rate groups within the positive employer minimum rate and the positive employer maximum rate determined under section 52-04-05. Each successive rate group for positive employer rate groups must be assigned a rate equal to ~~one hundred twenty percent of the previous group's rate plus with a minimum increase of one-tenth of one percent and a maximum increase of four-tenths of one percent.~~ The number of rate groups in the positive employer schedule must be ~~the number required to provide for a rate group at each one-tenth of one percent interval between the positive employer minimum rate and the positive employer maximum rate determined under section 52-04-05 ten.~~ For each calendar year the bureau shall establish a schedule of negative employer rate groups with the negative employer minimum rate and the negative employer maximum rate determined under section 52-04-05. Each successive rate group for negative employer rate groups must be assigned a rate equal to the previous group's rate plus four-tenths of one percent. The number of rate groups in the negative employer schedule must be the number required to provide for a rate group at each four-tenths of one percent interval between the negative employer minimum rate and the negative employer maximum rate determined under section 52-04-05.

3. Positive employers must be assigned to the rate in the positive employer rate schedule in the rank order of their reserve ratios, as determined in subsection 1, with the highest reserve ratio positive employers assigned to the first positive employer rate. Each successively ranked positive employer must be assigned to a rate within the positive employer rate schedule so that ~~each rate within the rate schedule is assigned the same proportion~~ the first rate within the rate schedule is assigned sixty percent of the positive employer's prior year's taxable wages and each of the remaining nine rates within the rate schedule are assigned the same proportion of the remaining forty percent of the positive employer's prior year's taxable wages. Negative employers must be assigned to the rate in the negative employer rate schedule in the rank order of their reserve ratios, as determined in subsection 1, with the highest reserve ratio negative employers assigned to the first negative employer rate. Each successively ranked negative employer must be assigned to a rate within the negative employer rate schedule so that each rate within the rate schedule is assigned the same proportion of the negative employer's prior year's taxable wages.
  
6. If an employer has a quarterly taxable payroll in excess of fifty thousand dollars and at least three times its established average annual payroll or the average annual payroll is zero, and the employer's cumulative lifetime reserve balance is positive, then the tax rate for that employer is ~~one hundred fifty~~ ninety percent of the positive employer maximum rate in effect that year or a rate of one percent, whichever is greater, beginning the first day of the calendar quarter in which it occurred and for the remainder of the calendar year. If the employer's cumulative lifetime reserve balance is negative, then the tax rate for that employer is the negative employer maximum rate of contribution in effect that year, beginning the first day of the calendar quarter in which it occurred and for the remainder of the calendar year.

Approved March 9, 2007

Filed March 12, 2007

**CHAPTER 442****SENATE BILL NO. 2035**

(Legislative Council)  
(Industry, Business, and Labor Committee)

**UNEMPLOYMENT INSURANCE TAX RATES**

AN ACT to amend and reenact subdivision d of subsection 5 of section 52-04-05 of the North Dakota Century Code, relating to determination of unemployment insurance tax rates.

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

<sup>209</sup> **SECTION 1. AMENDMENT.** Subdivision d of subsection 5 of section 52-04-05 of the North Dakota Century Code is amended and reenacted as follows:

- d. The tax rate necessary to generate the amount of income needed to reach a solvency balance must be calculated by dividing the solvency balance by the amount of income estimated as needed to pay benefits and multiplying the resulting ratio times each rate, within the positive and negative rate arrays, with a minimum multiplier of one hundred percent for the negative rate array, as determined under this section to meet the average required rate needed to pay benefits as defined by subdivision a. The ratio calculated under this subdivision must also be multiplied by any rate calculated as required by subsection 6 to arrive at a final rate for a new business. All results calculated under this subdivision must be rounded to the nearest one-hundredth of one percent.

Approved March 2, 2007  
Filed March 2, 2007

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<sup>209</sup> Section 52-04-05 was also amended by section 1 of House Bill No. 1413, chapter 441.

**CHAPTER 443****HOUSE BILL NO. 1278**

(Representatives Wald, Keiser)  
(Senator Klein)

**CONSTRUCTION PROJECT RISK PROTECTION**

AN ACT to amend and reenact section 52-04-06.1 of the North Dakota Century Code, relating to construction project risk protection.

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

**SECTION 1. AMENDMENT.** Section 52-04-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**52-04-06.1. Construction project risk protection.**

1. Any project in this state with an estimated construction cost of at least fifty million dollars which is planned to be completed or discontinued within a period of seven years is subject to this section. The general or prime contractor, or the owner in those situations in which there is no general or prime contractor, of a project that meets the criteria specified under this section shall post the bond or irrevocable letter of credit required in subsection 2 before commencement of construction work on the project and shall report annually, within thirty days of the anniversary date the project becomes subject to this section, to the bureau any change in the construction costs of projects subject to this section.
2. If the bureau determines that the project is or will be within the criteria stated by this section, the bureau shall require the general or prime contractor, or the owner in those situations in which there is no general or prime contractor, for whom the project is being constructed, on behalf of each employing unit, excluding design and engineering firms, to post a bond executed by a surety company authorized to do business in the state or an irrevocable letter of credit from a federal deposit insurance corporation insured state or nationally chartered bank authorized to do business in the state which will insure payment for all benefits claimed by employees of all employing units working on the project. The bureau may adjust the amount of bond or irrevocable letter of credit required under this subsection to cover any significant increases or decreases in project construction costs reported by the general or prime contractor or owner. If any general or prime contractor or owner fails to comply with this subsection, the bureau may apply to any court of this state within the jurisdiction in which the contractor or owner is found, located, or transacts business to obtain an order to compel the general or prime contractor or owner to post the required bond or irrevocable letter of credit required under this subsection. Any failure to obey an order of the court may be punished by the court as a contempt of court.
3. The amount of bond or irrevocable letter of credit must be the difference between the estimated benefits paid and estimated contributions, multiplied by fifty percent. The estimation of contributions expected must be made as follows: multiply the current year's ~~negative~~ positive



employer minimum rate ~~or six percent, whichever is greater~~ times the current year's taxable wage base times the estimated number of employees on the project using figures from project plans, times the number of years between the start date and the estimated completion date of the project. The estimation of benefits paid must be made as follows: ~~the ratio of benefits charged to contributions paid in the most recent three fiscal years by employers in the construction industry multiplied by the estimated contributions~~ multiply the estimated number of employees, from the project plans, times the current year's maximum weekly benefit amount times the duration, twelve weeks for the first year and twelve weeks for subsequent years, times the number of years between the start date and the completion date rounded up to the next whole number.

4. Thirty months after the completion or discontinuance of the project, the bureau shall determine the total benefits paid to employees of the employing unit or units. If the total amount paid to the employees of the unit or units exceeds the total amount of contributions collected from the units under the North Dakota Unemployment Compensation Law, the general or prime contractor, or the owner in those situations in which there is no general or prime contractor, shall pay the total amount of benefits paid to the employees of the units which exceeded the total amount of contributions collected from the unit or units. If the general or prime contractor, or the owner in those situations in which there is no general or prime contractor, does not pay the payment requirement, job service North Dakota shall collect the payment from the surety company that executed the surety bond or bank that issued the irrevocable letter of credit. The general or prime contractor, or the owner in those situations in which there is no general or prime contractor, shall remain liable for any amount of benefits paid to the employees working on the project which exceeds the amount of contributions collected from the employers who worked on the project which is not covered by the amount of the bond or irrevocable letter of credit.
5. For the purposes of this section, a project includes all entities that employ or contract for the employment of, or is employing directly or indirectly through agents, independent contractors, or subcontractors, excluding design and engineering firms. Each employing unit, whether contractor, subcontractor, or otherwise, involved in the project is subject to this section, excluding design and engineering firms.
6. Each employing unit having employees working on a project subject to this section, excluding design and engineering firms, shall maintain separate records for all employment on the project showing each individual's name, social security number, wages paid, and the dates the wages were paid. The employers shall submit separate reports from other employment subject to the North Dakota Unemployment Compensation Law under a separate reporting account established for the project.
7. This section applies to projects for which bids are let after August 1, 2001.
8. The determination of whether a project is subject to this section must be made in the same manner as provided for in section 52-04-17.

9. This section does not apply to any project in which the state is the owner or contractor.

Approved April 17, 2007  
Filed April 18, 2007

**CHAPTER 444****HOUSE BILL NO. 1056**

(Industry, Business and Labor Committee)  
(At the request of Job Service North Dakota)

**FEDERAL ADVANCE INTEREST REPAYMENT FUND**

AN ACT to amend and reenact section 52-04-22 of the North Dakota Century Code, relating to the unemployment insurance federal advance interest repayment fund; and to provide a continuing appropriation.

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

**SECTION 1. AMENDMENT.** Section 52-04-22 of the North Dakota Century Code is amended and reenacted as follows:

**52-04-22. Federal advance interest repayment fund - Continuing appropriation.** 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 must consist of all interest collected on delinquent contributions, all penalties provided by the Unemployment Compensation Law, and funds borrowed from sources other than federal advances which are placed in this fund. All moneys accruing to this fund in any manner must be maintained in this separate interest-bearing account at the Bank of North Dakota or invested in deposits of the Bank of North Dakota.

Moneys in this fund may also be used for the purpose of repaying funds placed in this fund which are borrowed from sources other than federal advances and for the purpose of paying interest due on other than federal advances. However, moneys in this fund may 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.

Moneys in this fund may also be used for the purpose of paying principal and interest costs associated with the acquisition and renovation of land and a building to be used as an office facility by job service North Dakota in Grand Forks, North Dakota. Moneys in this fund also may be used for the purpose of paying principal and interest costs associated with the acquisition and renovation of land and building to be used as an office facility by job service North Dakota in Bismarck, North Dakota. Moneys in this fund may be used for the purpose of paying the costs of repair, renovation, or alteration of job service-owned office facilities. Moneys in this fund may be used for the purpose of paying the replacement rate charged for use of state fleet vehicles. Moneys in this fund may be used for the purposes of reemployment programs to ensure the integrity of the unemployment insurance program in this state. Moneys in this fund are hereby appropriated for the purposes specified in this section including the purpose of paying principal and interest costs associated with the acquisition and renovation of land and a building to be used as an office facility by job service North Dakota in Grand Forks, North Dakota. Moneys in this fund are appropriated for the purpose of paying the principal and interest costs associated with the acquisition and renovation of land and a building to be used as an office facility by job service North Dakota in Bismarck, North Dakota. Moneys in this fund are appropriated for the purpose of paying the costs of repair, renovation, or

alteration of job service-owned office facilities. Moneys in this fund are appropriated for the purpose of paying the replacement rate charged for use of state fleet vehicles. Moneys in this fund are appropriated for the purposes of reemployment programs to ensure the integrity of the unemployment insurance program in this state.

Approved April 11, 2007  
Filed April 13, 2007

# SPORTS AND AMUSEMENTS

## CHAPTER 445

### HOUSE BILL NO. 1201

(Representatives Boehning, Koppelman)  
(Senators Klein, Krebsbach)

### BOXING, KICKBOXING, AND MIXED FIGHTING FEES

AN ACT to amend and reenact subsection 3 of section 53-01-07 of the North Dakota Century Code, relating to the gross revenue fee for boxing, kickboxing, and mixed fighting style competitions; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 53-01-07 of the North Dakota Century Code is amended and reenacted as follows:

3. Establish ~~by rule~~ a fee based on the percentage of gross revenues from any boxing, kickboxing, mixed fighting style competition, or sparring exhibition held in this state to pay for the expenses of members of the athletic advisory board or the mixed fighting style advisory board. A fee established under this subsection may not exceed ~~one~~ three percent of the gross revenues of the exhibition from any and all sources including cable television and pay-per-view telecasts of the event, exclusive of any federal tax thereon.

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

Approved March 5, 2007  
Filed March 6, 2007

**CHAPTER 446****SENATE BILL NO. 2225**

(Senators Grindberg, Bowman, Tollefson)  
(Representatives S. Kesh, Svedjan, Wrangham)

**BINGO CARD TAX REDUCTION**

AN ACT to amend and reenact subsections 1 and 10 of section 53-06.1-01, subsection 2 of section 53-06.1-12, subsections 15, 16, and 17 of section 57-39.2-01, section 57-39.2-02.1, and subsections 5, 6, and 7 of section 57-40.2-01 of the North Dakota Century Code, relating to the excise tax upon gross proceeds of licensed gaming organizations for bingo cards and elimination of sales and use taxes for bingo cards; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsections 1 and 10 of section 53-06.1-01 of the North Dakota Century Code are amended and reenacted as follows:

1. "Adjusted gross proceeds" means gross proceeds less cash prizes, cost of merchandise prizes, ~~sales tax on bingo cards~~ excise tax, pull tab excise tax, and federal excise tax imposed under section 4401 of the Internal Revenue Code [26 U.S.C. 4401].
10. "Gross proceeds" means all cash and checks received from conducting games ~~and sales tax on bingo cards~~.

**SECTION 2. AMENDMENT.** Subsection 2 of section 53-06.1-12 of the North Dakota Century Code is amended and reenacted as follows:

2. Except as provided in subsection 3, in addition to any other tax provided by law and in place of sales or use taxes, there is imposed an excise tax of four and one-half percent on the gross proceeds from the sale at retail of pull tabs ~~and three percent on the gross proceeds from the sale at retail of bingo cards to final users~~. This includes pull tabs ~~or bingo cards~~ provided to a player in exchange for redeemed winning pull tabs ~~or bingo cards~~. The tax must be paid to the attorney general when tax returns are filed.

<sup>210</sup> **SECTION 3. AMENDMENT.** Subsections 15, 16, and 17 of section 57-39.2-01 of the North Dakota Century Code are amended and reenacted as follows:

15. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrental. "Retail sale" or "sale at retail" includes the sale, including the leasing or renting, to a

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<sup>210</sup> Section 57-39.2-01 was also amended by section 3 of Senate Bill No. 2380, chapter 528.

consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property; the sale of steam, gas, and communication service to retail consumers or users; the sale of vulcanizing, recapping, and retreading services for tires; ~~the furnishing of bingo cards;~~ the ordering, selecting, or aiding a customer to select any goods, wares, or merchandise from any price list or catalog, which the customer might order, or be ordered for such customer to be shipped directly to such customer; the sale or furnishing of hotel, motel, or tourist court accommodations, tickets, or admissions to any place of amusement, athletic event, or place of entertainment, including the playing of any machine for amusement or entertainment in response to the use of a coin; and the sales of magazines and other periodicals. By the term "processing" is meant any tangible personal property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a sale of tangible personal property for a purpose other than for processing; the delivery of possession within the state of North Dakota of tangible personal property by a wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota retail sales tax permit or to a person who by contract incorporates such tangible personal property into, or attaches it to, real property situated in another state may not be considered a taxable sale if such delivery of possession would not be treated as a taxable sale in that state. As used in this subsection, the word "consumer" includes any hospital, infirmary, sanatorium, nursing home, home for the aged, or similar institution that furnishes services to any patient or occupant. The sale of an item of tangible personal property to a person under a finance leasing agreement over the term of which the property will be substantially consumed must be considered a retail sale if the purchaser elects to treat it as such by paying or causing the transferor to pay the sales tax thereon to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-39.2-12.

16. "Retailer" or "seller" includes every person engaged in the business of leasing or renting hotel, motel, or tourist court accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, and communication services, or tickets or admissions to places of amusement, entertainment, and athletic events, including the playing of any machine for amusement or entertainment in response to the use of a coin, or magazines, or other periodicals; ~~any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03;~~ and includes any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in the

manner provided in this chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

17. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatever, for a consideration, and includes the furnishing or service of steam, gas, or communication, ~~the furnishing of bingo cards,~~ the furnishing of hotel, motel, or tourist court accommodations, the furnishing of tickets or admissions to any place of amusement, athletic event, or place of entertainment, including the playing of any machine for amusement or entertainment in response to the use of a coin, and sales of magazines and other periodicals. Provided, the words "magazines and other periodicals" as used in this subsection do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.

<sup>211</sup> **SECTION 4. AMENDMENT.** Section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted 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 except as otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within this state 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.
  - b. The furnishing or service of communication services or steam other than steam used for processing agricultural products.
  - c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity; ~~and including the furnishing of bingo cards~~ and the playing of any machine for

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<sup>211</sup> Section 57-39.2-02.1 was also amended by section 1 of House Bill No. 1049, chapter 529, and section 4 of Senate Bill No. 2380, chapter 528.



amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.

- d. Magazines and other periodicals.
- e. The leasing or renting of a hotel or motel room or tourist court accommodations.
- f. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.
- g. Coal mined in this state and used for heating buildings, except for coal used in agricultural processing or sugar beet refining plants.
- h. Sale, lease, or rental of a computer and prewritten computer software, including prewritten computer software delivered electronically or by load and leave. For purposes of this subdivision:
  - (1) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.
  - (2) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.
  - (3) "Delivered electronically" means delivered from the seller to the purchaser by means other than tangible storage media.
  - (4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
  - (5) "Load and leave" means delivery to the purchaser by use of a tangible storage media when the tangible storage media is not physically transferred to the purchaser.
  - (6) "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more "prewritten computer software" programs or prewritten portions thereof does not cause the combination to be other than "prewritten computer software". "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. If a person modifies or enhances "computer software" of which the person is not the author or creator, the person is deemed to be the author or creator only of such person's modifications or enhancements. "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, if such modification or

enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software". However, if there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software".

2. There is 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.

**SECTION 5. AMENDMENT.** Subsections 5, 6, and 7 of section 57-40.2-01 of the North Dakota Century Code are amended and reenacted as follows:

5. "Purchased at retail" includes:
  - a. The completion of the fabricating, compounding, or manufacturing of tangible personal property by a person for storage, use, or consumption by that person.
  - b. The furnishing of ~~binge cards,~~ wares, and merchandise, and gas, when furnished or delivered to consumers or users within this state, and the sale of vulcanizing, recapping, and retreading services for tires.
  - c. The leasing or renting of tangible personal property, the sale, storage, use, or consumption of which has not been previously subjected to a retail sales or use tax in this state.
  - d. The purchase of magazines or other periodicals. Provided, the words "magazines and other periodicals" as used in this subdivision do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.
  - e. The severance of sand or gravel from the soil.
  - f. The purchase, including the leasing or renting, of tangible personal property from any bank for storage, use, or consumption.
  - g. The purchase of an item of tangible personal property by a purchaser who rents or leases it to a person under a finance leasing agreement over the term of which the property will be substantially consumed, if the purchaser elects to treat it as being purchased at retail by paying or causing the transferor to pay the use tax to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-40.2-07.
6. "Retailer" includes every person engaged in the business of selling tangible personal property for use within the meaning of this chapter, but, when in the opinion of the commissioner, it is necessary for the efficient administration of this chapter to regard any salesman,

representative, trucker, peddler, or canvasser as the agent of the dealer, distributor, supervisor, employer, or other person under whom that person operates or from whom that person obtains the tangible personal property sold by that person, whether that person is making sales in that person's own behalf or in behalf of such dealer, distributor, supervisor, employer, or other person, the commissioner may regard that person as such agent, and may regard the dealer, distributor, supervisor, employer, or other person as a retailer for the purposes of this chapter. ~~A retailer includes any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03.~~ A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

7. "Retailer maintaining a place of business in this state", or any like term, means any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within this state under the authority of the retailer or its subsidiary, whether such place of business or agent is located in the state permanently or temporarily, or whether or not such retailer or subsidiary is authorized to do business within this state. ~~It includes any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03.~~ It also includes every person who engages in regular or systematic solicitation of sales of tangible personal property in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, by means of print, radio or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system for the purpose of effecting retail sales of tangible personal property.

**SECTION 6. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2007.

Approved May 4, 2007  
Filed May 4, 2007

**CHAPTER 447****HOUSE BILL NO. 1263**

(Representatives Boehning, Delmore, Haas)

**RAFFLE PRIZE LIMITS**

AN ACT to amend and reenact section 53-06.1-10.1 of the North Dakota Century Code, relating to raffles.

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

**SECTION 1. AMENDMENT.** Section 53-06.1-10.1 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-10.1. Raffles.** A prize for a raffle may be cash or merchandise but may not be real estate. No single cash prize may exceed ~~one~~ four thousand dollars and the total cash prizes in one day may not exceed ~~three~~ four thousand dollars. However, on not more than ~~one occasion~~ two occasions per year a licensed organization may, at the request of a winning player, exchange a merchandise prize valued at not more than twenty-five thousand dollars for a cash prize.

Approved April 27, 2007  
Filed April 25, 2007

**CHAPTER 448****HOUSE BILL NO. 1126**

(Judiciary Committee)

(At the request of the North Dakota Racing Commission)

**PARIMUTUEL WAGERING**

AN ACT to create and enact a new subsection to section 53-06.2-01 and three new subsections to section 53-06.2-04 of the North Dakota Century Code, relating to the definition of the racing promotion fund and to the duties of the racing commission; and to amend and reenact subsection 4 of section 53-06.2-05, subsection 1 of section 53-06.2-07, subsection 4 of section 53-06.2-08, sections 53-06.2-10.1 and 53-06.2-11, and subsection 2 of section 53-06.2-13 of the North Dakota Century Code, relating to parimutuel wagering.

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

**SECTION 1.** A new subsection to section 53-06.2-01 of the North Dakota Century Code is created and enacted as follows:

"Racing promotion fund" means a fund administered by the commission established to assist in improving and upgrading racetracks in the state, promoting horse racing in the state, and developing new racetracks in the state as necessary and approved by the commission.

**SECTION 2.** Three new subsections to section 53-06.2-04 of the North Dakota Century Code are created and enacted as follows:

Report biennially to the legislative council regarding the operation of the commission.

Provide notice to the North Dakota horsemen's council of meetings held by the commission and permit the North Dakota horsemen's council to participate in the meetings through placement of items on the agenda.

Complete, distribute, and post on the commission's web site the minutes of each commission meeting within thirty days of that meeting or before the next meeting of the commission, whichever occurs first.

<sup>212</sup> **SECTION 3. AMENDMENT.** Subsection 4 of section 53-06.2-05 of the North Dakota Century Code is amended and reenacted as follows:

4. License all participants in the racing and simulcast parimutuel wagering industry and require and obtain information the commission deems

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<sup>212</sup> Section 53-06.2-05 was also amended by section 19 of Senate Bill No. 2260, chapter 115.

necessary from license applicants. Licensure of service providers, totalizator companies, site operators, and organizations applying to conduct or conducting parimutuel wagering must be approved by the attorney general. The attorney general may not grant a license denied by the commission. The commission may obtain from the bureau of criminal investigation, without charge, criminal history record information as required in the licensing process.

**SECTION 4. AMENDMENT.** Subsection 1 of section 53-06.2-07 of the North Dakota Century Code is amended and reenacted as follows:

1. On compliance by an applicant with this chapter and the approval of the attorney general, the commission may issue a license to conduct races. The attorney general may not grant a license denied by the commission.

**SECTION 5. AMENDMENT.** Subsection 4 of section 53-06.2-08 of the North Dakota Century Code is amended and reenacted as follows:

4. The commission may grant licenses to horse owners, jockeys, riders, agents, trainers, grooms, stable foremen, exercise workers, veterinarians, valets, concessionaires, service providers, employees of racing associations, and such other persons as determined by the commission. Licensure of service providers, totalizator companies, site operators, and organizations applying to conduct or conducting parimutuel wagering must be approved by the attorney general. The attorney general may not grant a license denied by the commission. License fees are as established by the commission.

**SECTION 6. AMENDMENT.** Section 53-06.2-10.1 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-10.1. Simulcast wagering.** In addition to racing under the certificate system, as authorized by this chapter, and conducted upon the premises of a racetrack, simulcast parimutuel wagering may be conducted in accordance with this chapter ~~and interim standards that need not comply with chapter 28-32,~~ or rules adopted by the commission under this chapter in accordance with chapter 28-32. Any organization qualified under section 53-06.2-06 to conduct racing may make written application to the commission for the conduct of simulcast parimutuel wagering on races held at licensed racetracks inside the state or racetracks outside the state, or both. Licensure of service providers, totalizator companies, site operators, or organizations applying to conduct or conducting simulcast or account wagering must be approved by the attorney general. The attorney general may not grant a license denied by the commission. Notwithstanding any other provision of this chapter, the commission may authorize any licensee to participate in interstate or international combined wagering pools with one or more other racing jurisdictions. Anytime that a licensee participates in an interstate or international combined pool, the licensee, as prescribed by the commission, may adopt the take-out of the host jurisdiction or facility. The commission may permit a licensee to use one or more of its races or simulcast programs for an interstate or international combined wagering pool at locations outside its jurisdiction and may allow parimutuel pools in other states to be combined with parimutuel pools in its jurisdiction for the purpose of establishing an interstate or international combined wagering pool. The participation by a licensee in a combined interstate or international wagering pool does not cause that licensee to be considered to be doing business in any jurisdiction other than the jurisdiction in which the licensee is physically located. Parimutuel taxes or commissions may not be imposed on any amounts wagered in an interstate or

international combined wagering pool other than amounts wagered within this jurisdiction. The certificate system also permits parimutuel wagering to be conducted through account wagering. As used in this section, "account wagering" means a form of parimutuel wagering in which an individual deposits money in an account and uses the account balance to pay for parimutuel wagers. An account wager made on an account established in this state may only be made through the licensed simulcast service provider approved by the attorney general and authorized by the commission to operate the simulcast parimutuel wagering system under the certificate system. The attorney general may not grant a license denied by the commission. An account wager may be made in person, by direct telephone communication, or through other electronic communication in accordance with rules adopted by the commission. Breakage for interstate or international combined wagering pools must be calculated in accordance with the statutes or rules of the host jurisdiction and must be distributed among the participating jurisdictions in a manner agreed to among the jurisdictions.

<sup>213</sup> **SECTION 7. AMENDMENT.** Section 53-06.2-11 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-11. (Effective through June 30, 2007) Bet payoff formulas - Uses by licensee of funds in excess of expenses - Payment to general fund.**

1. a. For each day of a live race meet or a simulcast day in this state on win, place, and show parimutuel pools, the licensee shall deduct up to twenty percent of the total win, place, and show pool. On the first eleven million dollars of total wagering handle in each biennium, two percent must be paid to the state treasurer to be deposited in the general fund. One-half of one percent must be paid to the North Dakota racing commission to be used for the North Dakota purse fund. One-half of one percent must be paid to the North Dakota racing commission to be used for the North Dakota breeders' fund for the respective breed of horses racing at that meet. Breakage must be paid to the North Dakota racing commission to be deposited in the promotion fund.
- b. On the wagering handle on win, place, and show wagering pools in excess of eleven million dollars in each biennium, one-sixteenth of one percent must be paid to the commission to be deposited in the purse fund; one-sixteenth of one percent must be paid to the commission to be deposited in the promotion fund; one-sixteenth of one percent must be paid to the commission to be deposited in the breeders' fund; and one-sixteenth of one percent must be paid to the state treasurer to be deposited in the general fund.

For wagering on live horse racing and simulcast wagering:

- a. In win, place, and show parimutuel pools, the licensee may deduct no more than twenty percent of the amount wagered. Of the amount wagered, the licensee shall pay:

<sup>213</sup> Section 53-06.2-11 was also amended by section 2 of House Bill No. 1324, chapter 449.

- (1) Two percent to the state treasurer to be deposited in the general fund.
    - (2) One-half of one percent to the commission to be deposited in the breeders' fund.
    - (3) One-half of one percent to the commission to be deposited in the purse fund.
    - (4) One-half of one percent to the commission to be deposited in the racing promotion fund.
  - b. In daily double, quinella, exacta, trifecta, or other combination parimutuel pools, the licensee may deduct no more than twenty-five percent of the amount wagered. Of the amount wagered, the licensee shall pay:
    - (1) Two and one-half percent to the state treasurer to be deposited in the general fund.
    - (2) One-half of one percent to the commission to be deposited in the breeders' fund.
    - (3) One-half of one percent to the commission to be deposited in the purse fund.
    - (4) One-half of one percent to the commission to be deposited in the racing promotion fund.
2. For each day of a live race meet or a simulcast day in this state for each daily double, quinella, exacta, trifecta, or other wager combining two or more horses for winning payoffs, the licensee shall deduct up to twenty-five percent of each wagering pool. Of each wagering dollar, the amounts to be deposited in the general fund and other funds are as follows:
- a. On the first eleven million dollars of wagering handle in each biennium, one-half of one percent must be paid to the commission to be deposited in the purse fund; one-half of one percent must be paid to the commission to be deposited in the promotion fund; one-half of one percent must be paid to the commission to be deposited in the breeders' fund; and two and one-half percent must be paid to the state treasurer to be deposited in the general fund.
  - b. On the wagering handle in excess of eleven million dollars in each biennium, one-sixteenth of one percent must be paid to the commission to be deposited in the purse fund; one-sixteenth of one percent must be paid to the commission to be deposited in the promotion fund; one-sixteenth of one percent must be paid to the commission to be deposited in the breeders' fund; and one-sixteenth of one percent must be paid to the state treasurer to be deposited in the general fund.



For account wagering:

- a. In win, place, and show parimutuel pools, the licensee may deduct no more than twenty percent of the amount wagered.
- (1) Before eleven million dollars is wagered in all parimutuel wagering in each biennium, of the amount wagered by account wagering in win, place, and show parimutuel pools, the licensee shall pay:
- (a) Two percent to the state treasurer to be deposited in the general fund.
  - (b) One-half of one percent to the commission to be deposited in the breeders' fund.
  - (c) One-half of one percent to the commission to be deposited in the purse fund.
  - (d) One-half of one percent to the commission to be deposited in the racing promotion fund.
- (2) After eleven million dollars is wagered in all parimutuel wagering in each biennium, of the amount wagered by account wagering in win, place, and show parimutuel pools, the licensee shall pay:
- (a) One-sixteenth of one percent to the state treasurer to be deposited in the general fund.
  - (b) One-sixteenth of one percent to the commission to be deposited in the breeders' fund.
  - (c) One-sixteenth of one percent to the commission to be deposited in the purse fund.
  - (d) One-sixteenth of one percent to the commission to be deposited in the racing promotion fund.
- b. In daily double, quinella, exacta, trifecta, or other combination parimutuel pools, the licensee may deduct no more than twenty-five percent of the amount wagered.
- (1) Before eleven million dollars is wagered in each biennium, of the amount wagered by account wagering in daily double, quinella, exacta, trifecta, or other combination parimutuel pools, the licensee shall pay:
- (a) Two and one-half percent to the state treasurer to be deposited in the general fund.
  - (b) One-half of one percent to the commission to be deposited in the breeders' fund.

- (c) One-half of one percent to the commission to be deposited in the purse fund.
    - (d) One-half of one percent to the commission to be deposited in the racing promotion fund.
  - (2) After eleven million dollars is wagered in all parimutuel wagering in each biennium, of the amount wagered by account wagering in daily double, quinella, exacta, trifecta, or other combination parimutuel pools, the licensee shall pay:
    - (a) One-sixteenth of one percent to the state treasurer to be deposited in the general fund.
    - (b) One-sixteenth of one percent to the commission to be deposited in the breeders' fund.
    - (c) One-sixteenth of one percent to the commission to be deposited in the purse fund.
    - (d) One-sixteenth of one percent to the commission to be deposited in the racing promotion fund.
- 3. Unclaimed tickets and breakage from each live race meet and simulcast program as defined by the commission and the percentage of the wagering pool to be paid to the racing promotion fund under subsections 1 and 2 must be retained by the commission in a special fund to assist in improving and upgrading racetracks in the state, for the promotion of horse racing within the state, and in developing new racetracks in the state as necessary and approved by the commission. Notwithstanding this section, the commission may receive no more than twenty-five percent of this fund for the purpose of payment of operating expenses of the commission. For wagering handle in excess of eleven million dollars in each biennium, breakage must be divided, one-third to the North Dakota racing commission to be deposited in the promotion fund, one-third to the charity operating the site where the wagers are placed, and one-third to the service provider. For all parimutuel wagering the licensee shall pay to the commission the amount due for all unclaimed tickets and all breakage to be deposited in the racing promotion fund.
- 4. The licensee conducting a ~~wagering on live race meet or racing, simulcast program~~ ~~wagering, or account wagering~~ shall retain all other money in the parimutuel pool and pay it to bettors holding winning tickets as provided by rules adopted by the commission.
- 5. A licensee may not use any of the portion deducted for expenses under subsections 1 and 2 for expenses not directly incurred by the licensee in conducting parimutuel racing under the certificate system. After paying qualifying expenses, the licensee shall use the remainder of the amount so withheld only for eligible uses allowed to charitable gambling organizations under ~~subsection 2 of section 53-06.1-11~~ 53-06.1-11.1.
- 6. The ~~racing~~ commission shall deposit the moneys received pursuant to subsections 1, 2, and 3 and from the North Dakota horse racing

foundation pursuant to subsection 5 of section 53-06.2-05 in three special funds in the state treasury. These funds must be known as the breeders' fund, the purse fund, and the racing promotion fund. Moneys, and any earnings on the moneys, in the breeders' fund, purse fund, and racing promotion fund are appropriated to the commission on a continuing basis to carry out the purposes of those funds under this chapter and must be administered and disbursed in accordance with rules adopted by the commission. The commission, upon approval of the emergency commission, may receive no more than twenty-five percent of the racing promotion fund for the payment of the commission's operating expenses.

**(Effective after June 30, 2007) Bet payoff formulas - Uses by licensee of funds in excess of expenses - Payment to general fund.**

1. For each day of a live race meet or a simulcast day in this state on win, place, and show parimutuel pools, the licensee shall deduct up to twenty percent of the total win, place, and show pool. One-half of one percent must be paid to the North Dakota racing commission to be used for the North Dakota purse fund. One-half of one percent must be paid to the North Dakota racing commission to be used for the North Dakota breeders' fund for the respective breed of horses racing at that meet. On the first thirty-five million five hundred thousand dollars of total wagering handle in each biennium, two percent must be paid to the state treasurer to be deposited in the general fund. On the total wagering handle in excess of thirty-five million five hundred thousand dollars in each biennium, one-half of one percent must be paid to the state treasurer to be deposited in the general fund.
2. For each day of a live race meet or a simulcast day in this state for each daily double, quinella, exacta, trifecta, or other wager combining two or more horses for winning payoffs, the licensee shall deduct up to twenty-five percent of each wagering pool. Of each wagering dollar, the amounts to be deposited in the general fund and other funds are as follows:
  - a. On the first one hundred two million four hundred thousand dollars of wagering handle in each biennium, one-half of one percent must be paid to the commission to be deposited in the purse fund; one-half of one percent must be paid to the commission to be deposited in the promotion fund; one-half of one percent must be paid to the commission to be deposited in the breeders' fund; and two and one-half percent must be paid to the state treasurer to be deposited in the general fund.
  - b. On the wagering handle in excess of one hundred two million four hundred thousand dollars in each biennium, one-half of one percent must be paid to the commission to be deposited in the purse fund; one-half of one percent must be paid to the commission to be deposited in the promotion fund; one-half of one percent must be paid to the commission to be deposited in the breeders' fund; and one-fourth of one percent must be paid to the state treasurer to be deposited in the general fund.
3. Unclaimed tickets and breakage from each live race meet and simulcast program as defined by the commission and the percentage of the

wagering pool to be paid to the racing promotion fund under subsections 1 and 2 must be retained by the commission in a special fund to assist in improving and upgrading racetracks in the state, for the promotion of horse racing within the state, and in developing new racetracks in the state as necessary and approved by the commission. Notwithstanding this section, the commission may receive no more than twenty-five percent of this fund for the purpose of payment of operating expenses of the commission.

4. The licensee conducting a live race meet or simulcast program shall retain all other money in the parimutuel pool and pay it to bettors holding winning tickets as provided by rules adopted by the commission.
5. A licensee may not use any of the portion deducted for expenses under subsections 1 and 2 for expenses not directly incurred by the licensee in conducting parimutuel racing under the certificate system. After paying qualifying expenses, the licensee shall use the remainder of the amount so withheld only for eligible uses allowed to charitable gambling organizations under subsection 2 of section 53-06.1-11.
6. The racing commission shall deposit the moneys received pursuant to subsections 1, 2, and 3 and from the North Dakota horse racing foundation pursuant to subsection 5 of section 53-06.2-05 in three special funds in the state treasury. These funds must be known as the breeders' fund, the purse fund, and the racing promotion fund. Moneys, and any earnings on the moneys, in the breeders' fund, purse fund, and racing promotion fund are appropriated to the commission on a continuing basis to carry out the purposes of these funds under this chapter and must be administered and disbursed in accordance with rules adopted by the commission.

**SECTION 8. AMENDMENT.** Subsection 2 of section 53-06.2-13 of the North Dakota Century Code is amended and reenacted as follows:

2.
  - a. The attorney general may audit and investigate licensed service providers and affiliated companies authorized by the commission to operate the simulcast parimutuel wagering system, totalizator companies, site operators, or organizations applying to conduct or conducting parimutuel wagering. The attorney general may:
    - (1) Inspect all sites in which parimutuel wagering is conducted.
    - (2) Inspect all parimutuel wagering equipment and supplies.
    - (3) Seize, remove, or impound any parimutuel equipment, supplies, or books and records for the purpose of examination and inspection.
    - (4) Inspect, examine, photocopy, and audit all books and records.

- b. The commission shall reimburse the attorney general for ~~all services rendered to the racing commission auditing and investigation~~. Payment for the services auditing and investigation must be deposited in the attorney general's operating fund.

Approved April 26, 2007  
Filed April 27, 2007

**CHAPTER 449****HOUSE BILL NO. 1324**

(Representatives S. Meyer, Boe, Kretschmar)  
(Senators Marcellais, Taylor)

**BREED REGISTRY AND RACING COMMISSION FUNDS**

AN ACT to create and enact a new section to chapter 53-06.2 of the North Dakota Century Code, relating to the breed registry of the North Dakota racing commission; and to amend and reenact subsection 6 of section 53-06.2-11 of the North Dakota Century Code, relating to the purse, breeders', and racing promotion funds of the racing commission.

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

**SECTION 1.** A new section to chapter 53-06.2 of the North Dakota Century Code is created and enacted as follows:

**North Dakota-bred registry - Contract requirements.** The commission shall provide for registration of a North Dakota-bred horse for qualification for breeders' fund awards or purse supplements. The commission shall contract with a private person to maintain the registry. Through a competitive bidding process, the commission shall award the contract to the lowest responsible bidder. The cost of the contract must be paid from the breeders' fund.

<sup>214</sup> **SECTION 2. AMENDMENT.** Subsection 6 of section 53-06.2-11 of the North Dakota Century Code is amended and reenacted as follows:

6. The racing commission shall deposit the moneys received pursuant to subsections 1, 2, and 3 and from the North Dakota horse racing foundation pursuant to subsection 5 of section 53-06.2-05 in three special funds in the state treasury. These funds must be known as the breeders' fund, the purse fund, and the racing promotion fund. Moneys, and any earnings on the moneys, in the breeders' fund, purse fund, and racing promotion fund are appropriated to the commission on a continuing basis to carry out the purposes of those funds under this chapter and must be administered and disbursed in accordance with rules adopted by the commission. The commission may not transfer money among the funds. The commission shall distribute awards and payment supplements from the breeders' fund in the same calendar year the money was earned by the recipient. The commission shall distribute payments awarded to qualified owners and breeders from the breeders' fund without requiring owners and breeders to apply for the payments.

Approved March 21, 2007  
Filed March 21, 2007

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<sup>214</sup> Section 53-06.2-11 was also amended by section 7 of House Bill No. 1126, chapter 448.

**CHAPTER 450****SENATE BILL NO. 2101**

(Judiciary Committee)

(At the request of the Attorney General)

**LOTTERY TICKETS AND MOTOR VEHICLES AS PRIZES**

AN ACT to amend and reenact subsections 3 and 5 of section 53-12.1-01, subsection 1 of section 53-12.1-04, sections 53-12.1-08 and 53-12.1-09, subsection 1 of section 53-12.1-11, subsection 1 of section 53-12.1-12, and subsection 2 of section 57-40.3-04 of the North Dakota Century Code, relating to the North Dakota lottery and a motor vehicle excise tax exemption for a motor vehicle to be awarded as a prize by the lottery; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsections 3 and 5 of section 53-12.1-01 of the North Dakota Century Code are amended and reenacted as follows:

3. "Online lottery" means a game linked to a central computer via a telecommunications network in which the player selects or is assigned a specified number or symbol or group of numbers or symbols out of a predetermined range of numbers or symbols and a winning ticket is determined by chance.
5. "Ticket" means an original and acceptable tangible evidence of play prescribed by the lottery and produced by a lottery terminal or a properly and validly registered subscription play to prove participation in a draw of a game for a chance to win a prize.

**SECTION 2. AMENDMENT.** Subsection 1 of section 53-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

1. There is created the lottery advisory commission, which is composed of five members, three of whom are legislators selected by the chairman of the legislative council and two of whom are selected by the attorney general. The term of office is three years, expiring on June thirtieth with no more than two terms expiring in any one year. ~~Of the first members appointed, one must be appointed for a term of one year, two must be appointed for terms of two years, and two must be appointed for terms of three years.~~ No member may be appointed to more than two consecutive terms. Each member must be a citizen of the United States and a resident of this state. A chairman of the commission must be chosen annually from the membership of the commission by a majority of its members at the first meeting of the commission each fiscal year. A member may serve as chairman for more than one year.

**SECTION 3. AMENDMENT.** Section 53-12.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**53-12.1-08. Purchase of ticket or payment of prize to certain persons prohibited - Price of a ticket - Sale by retailer only - ~~Retailer second~~ Second chance drawing drawings - Prize paid to owner of a winning ticket - Prize subject to taxation - Discharge of liability - Penalty.**

1. A North Dakota lottery ticket may not be bought by or otherwise provided to, and a prize may not be paid to, the following individuals or to a parent, stepparent, child, stepchild, spouse, or sibling who is a regular member of the same household of the following individuals:
  - a. A member of the lottery advisory commission or employee of the lottery, unless authorized in writing by the director; or
  - b. An officer or employee of the lottery's gaming system vendor.

A person who knowingly violates this subsection is guilty of a class B misdemeanor on the first offense and a class A misdemeanor on a subsequent offense.

2. A retailer or employee of a retailer may buy a ticket and be paid a prize for a winning ticket.
3. Only a retailer may sell a ticket. A retailer may sell a ticket only at the site stated on the license or at a temporary site for a special event authorized by the lottery. A retailer may not sell a ticket at a price greater than the price set by the lottery rules. A person convicted of violating this subsection is guilty of a class A misdemeanor on the first offense and a class C felony on a subsequent offense.
4. A retailer may conduct a second chance drawing of entry forms or ~~nonwinning~~ tickets to promote the sale of a ticket at that site provided that a person is not required to purchase a ticket to participate.
5. No ticket may be sold or given to a minor. A retailer, employee of a retailer, or any other person who knowingly violates this subsection is guilty of a class B misdemeanor on the first offense and a class A misdemeanor on a subsequent offense.
6. The prize to be paid or awarded for a winning ticket must be paid to the person who the director determines is the owner of the ticket. However, the prize of a deceased winning player must be paid to the lawful representative of the estate. No prize may be paid on a winning ticket that has been purchased by use of a stolen lottery gift certificate or acquired illegally.
7. If an individual steals a ticket or lottery gift certificate from a retailer, the individual is guilty of a class A misdemeanor. However, if the total value of the tickets or gift certificates stolen exceeds five hundred dollars, the offense is a class C felony.
8. A prize awarded is subject to state and federal income tax laws and rules.
9. A person who, with intent to defraud, falsely makes, alters, forges, passes, or counterfeits a ticket or gift certificate issued by the lottery, regardless of the amount gained, is guilty of a class C felony.



10. The state, members of the lottery advisory commission, and employees of the lottery are discharged of all further liability upon payment of a prize.

<sup>215</sup> **SECTION 4. AMENDMENT.** Section 53-12.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**53-12.1-09. Operating fund - Continuing appropriation - Authorization of disbursements - Report - Net proceeds.** There is established within the state treasury the lottery operating fund into which must be deposited all revenue from the sale of tickets, interest received on money in the fund, and all other fees and moneys collected, less a prize on a lottery promotion, prize on a winning ticket or lottery promotion paid by a retailer, and ~~the a~~ retailer's commission. Except for moneys in the lottery operating fund appropriated by the legislative assembly for administrative and operating costs of the lottery under section 53-12.1-10, all other money in the fund is continuously appropriated for the purposes specified in this section. During each regular session, the attorney general shall present a report to the appropriations committee of each house of the legislative assembly on the actual and estimated operating revenue and expenditures for the current biennium and projected operating revenue and expenditures for the subsequent biennium authorized by this section. A payment of a prize or expense or transfer of net proceeds by the lottery may be made only against the fund or money collected from a retailer on the sale of a ticket. A disbursement from the fund must be for the following purposes:

1. Payment of a prize as the director deems appropriate to the owner of a valid, winning ticket;
2. Notwithstanding section 53-12.1-10, payment of a marketing expense that is directly offset by cosponsorship funds collected;
3. Payment of a gaming system or related service expense, retailer record and credit check fees, game group dues, and retailer commissions; and
- 3- 4. Transfer of net proceeds:
  - a. ~~Starting July 4, 2005, fifty~~ Fifty thousand dollars must be transferred to the state treasurer each quarter for deposit in the compulsive gambling prevention and treatment fund;
  - b. An amount for the lottery's share of a game's prize reserve pool must be transferred to the multistate lottery association; and
  - c. The balance of the net proceeds, less holdback of any reserve funds the director may need for continuing operations, must be transferred to the state treasurer on at least an annual basis for deposit in the state general fund.

**SECTION 5. AMENDMENT.** Subsection 1 of section 53-12.1-11 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>215</sup> Section 53-12.1-09 was also amended by section 1 of House Bill No. 1330, chapter 459.

1. The following information and records of the lottery are confidential:
  - a. Sales and income tax information, financial statements, and a credit report of a retailer applicant or person seeking or doing business with the lottery, and retailer application information other than the applicant's name and location;
  - b. Information related to a person owing a debt to the state or having a debt collected through a state agency that is made confidential by another state law or rule;
  - c. Internal control and security procedures, security information on a winning ticket, and information on a bid or contractual data, the disclosure of which is harmful to the efforts of the lottery to contract for goods and services on favorable terms;
  - d. Personal information on a winning player who purchases a subscription or a player who wins a prize on a winning ticket unless the player authorizes, in writing, release of the information; and
  - e. Lottery sales data, the disclosure of which is harmful to the competitive position of the lottery, retailer, or person seeking or doing business with the lottery. However, a retailer may authorize the lottery to release the retailer's lottery sales data.

**SECTION 6. AMENDMENT.** Subsection 1 of section 53-12.1-12 of the North Dakota Century Code is amended and reenacted as follows:

1. A claimant agency and the director shall cooperate on the setoff of a winning lottery ticket or promotional cash prize against a delinquent debt. A claimant agency is an agency of the state of North Dakota that a person owes money to or that collects money on behalf of another party to satisfy a debt. The claimant agency and director shall share necessary information, including the person's full name, social security number, and amount and type of debt, through a mutually convenient method to timely achieve a setoff of a prize.

<sup>216</sup> **SECTION 7. AMENDMENT.** Subsection 2 of section 57-40.3-04 of the North Dakota Century Code is amended and reenacted as follows:

2. Any motor vehicle owned by or in possession of the federal or state government or a political subdivision thereof or a motor vehicle procured by or on behalf of the North Dakota lottery that is to be awarded as a prize in a game or promotion.

Approved April 5, 2007  
Filed April 5, 2007

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<sup>216</sup> Section 57-40.3-04 was also amended by section 1 of House Bill No. 1160, chapter 534, section 4 of House Bill No. 1393, chapter 513, and section 3 of Senate Bill No. 2113, chapter 337.

# STATE GOVERNMENT

## CHAPTER 451

### HOUSE BILL NO. 1104

(Government and Veterans Affairs Committee)  
(At the request of the Department of Transportation)

### DISPLACED PERSONS EXPENSES

AN ACT to amend and reenact section 54-01.1-03 of the North Dakota Century Code, relating to moving and related expenses for displaced persons; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 54-01.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-01.1-03. (~~Effective through July 31, 2007~~) Moving and related expenses.**

1. Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the displacing agency shall provide for the payment to the displaced person of:
  - a. Actual, reasonable expenses in moving the displaced person and the displaced person's family, business, farm operation, or other personal property;
  - b. Actual, direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the state agency;
  - c. Actual, reasonable expenses in searching for a replacement business or farm; and
  - d. Actual, reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, as determined by criteria established by the state agency.
2. Any displaced person eligible for payments under subsection 1 who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection 1 may receive a moving expense allowance, determined according to a schedule established by the state agency.
3. Any displaced person eligible for payments under subsection 1, who is displaced from the person's place of business or farm operation and is eligible under criteria established by the state agency, may elect to

accept the payment authorized by this subsection in lieu of the payment authorized by subsection 1. The payment must consist of a fixed payment in an amount to be determined according to criteria established by the state agency. A person whose sole business at the displacement dwelling is the rental of the property to others does not qualify for a payment under this subsection.

**(Effective after July 31, 2007) Moving and related expenses.**

1. Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the displacing agency shall provide for the payment to the displaced person of:
  - a. Actual, reasonable expenses in moving the displaced person and the displaced person's family, business, farm operation, or other personal property;
  - b. Actual, direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the state agency;
  - c. Actual, reasonable expenses in searching for a replacement business or farm; and
  - d. Actual, reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, but not to exceed ten thousand dollars.
2. Any displaced person eligible for payments under subsection 1 who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection 1 may receive a moving expense allowance, determined according to a schedule established by the state agency.
3. Any displaced person eligible for payments under subsection 1, who is displaced from the person's place of business or farm operation and is eligible under criteria established by the state agency, may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection 1. Such payment must consist of a fixed payment in an amount to be determined according to criteria established by the state agency, except that the payment may not be less than one thousand dollars, nor more than twenty thousand dollars. A person whose sole business at the displacement dwelling is the rental of the property to others does not qualify for a payment under this subsection.

Approved March 5, 2007  
Filed March 6, 2007

**CHAPTER 452****SENATE BILL NO. 2145**

(Senators Lyson, Hacker)  
(Representatives Hatlestad, Sukut)

**CHOCHECHERRY AS STATE FRUIT**

AN ACT to create and enact a new section to chapter 54-02 of the North Dakota Century Code, relating to designating the chokecherry as the official state fruit.

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

**SECTION 1.** A new section to chapter 54-02 of the North Dakota Century Code is created and enacted as follows:

**State fruit.** The chokecherry, prunus virginiana, is the official fruit of the state of North Dakota.

Approved March 29, 2007  
Filed March 30, 2007

**CHAPTER 453****HOUSE BILL NO. 1106**

(Government and Veterans Affairs Committee)  
(At the request of the Legislative Compensation Commission)

**LEGISLATIVE ASSEMBLY MEMBER COMPENSATION**

AN ACT to amend and reenact subsection 1 and subdivision a of subsection 7 of section 54-03-20 and subsection 1 of section 54-35-10 of the North Dakota Century Code, relating to compensation and expense reimbursement of members of the legislative assembly; and to provide an effective date.

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

<sup>217</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 54-03-20 of the North Dakota Century Code is amended and reenacted as follows:

1. Each member of the legislative assembly is entitled to receive as compensation for services the sum of one hundred ~~twenty-five~~ thirty dollars for each calendar day during any organizational, special, or regular legislative session and for each day that member attends a meeting of a legislative committee between the organizational session and the regular session as authorized by legislative rule.

<sup>218</sup> **SECTION 2. AMENDMENT.** Subsection 1 of section 54-03-20 of the North Dakota Century Code is amended and reenacted as follows:

1. Each member of the legislative assembly is entitled to receive as compensation for services the sum of one hundred ~~thirty~~ thirty-five dollars for each calendar day during any organizational, special, or regular legislative session and for each day that member attends a meeting of a legislative committee between the organizational session and the regular session as authorized by legislative rule.

<sup>219</sup> **SECTION 3. AMENDMENT.** Subdivision a of subsection 7 of section 54-03-20 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>217</sup> Section 54-03-20 was also amended by section 9 of House Bill No. 1001, chapter 1, section 10 of House Bill No. 1001, chapter 1, section 2 of House Bill No. 1106, chapter 453, section 3 of House Bill No. 1106, chapter 453, and section 4 of House Bill No. 1106, chapter 453.

<sup>218</sup> Section 54-03-20 was also amended by section 9 of House Bill No. 1001, chapter 1, section 10 of House Bill No. 1001, chapter 1, section 1 of House Bill No. 1106, chapter 453, section 3 of House Bill No. 1106, chapter 453, and section 4 of House Bill No. 1106, chapter 453.

<sup>219</sup> Section 54-03-20 was also amended by section 9 of House Bill No. 1001, chapter 1, section 10 of House Bill No. 1001, chapter 1, section 1 of House Bill No. 1106, chapter 453, section 2 of House Bill No. 1106, chapter 453, and section 4 of House Bill No. 1106, chapter 453.

7. a. In addition, each member is entitled to receive during the term for which the member was elected, as compensation for the execution of public duties during the biennium, the sum of three hundred ~~forty~~ sixty-four dollars a month, which is payable every six months or monthly, at the member's option.

<sup>220</sup> **SECTION 4. AMENDMENT.** Subdivision a of subsection 7 of section 54-03-20 of the North Dakota Century Code is amended and reenacted as follows:

7. a. In addition, each member is entitled to receive during the term for which the member was elected, as compensation for the execution of public duties during the biennium, the sum of three hundred ~~sixty-four~~ seventy-eight dollars a month, which is payable every six months or monthly, at the member's option.

<sup>221</sup> **SECTION 5. AMENDMENT.** Subsection 1 of section 54-35-10 of the North Dakota Century Code is amended and reenacted as follows:

1. The members of the council and the members of any committee of the council are entitled to be compensated for the time spent in attendance at sessions of the council and of its committees at the rate of one hundred four dollars per day and must 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.

<sup>222</sup> **SECTION 6. AMENDMENT.** Subsection 1 of section 54-35-10 of the North Dakota Century Code is amended and reenacted as follows:

1. The members of the council and the members of any committee of the council are entitled to be compensated for the time spent in attendance at sessions of the council and of its committees at the rate of one hundred ~~four~~ eight dollars per day and must 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.

**SECTION 7. EFFECTIVE DATE.** Sections 1, 3, and 5 of this Act become effective on July 1, 2007, and sections 2, 4, and 6 of this Act become effective on July 1, 2008.

Approved May 1, 2007  
Filed May 2, 2007

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<sup>220</sup> Section 54-03-20 was also amended by section 9 of House Bill No. 1001, chapter 1, section 10 of House Bill No. 1001, chapter 1, section 1 of House Bill No. 1106, chapter 453, section 2 of House Bill No. 1106, chapter 453, and section 3 of House Bill No. 1106, chapter 453.

<sup>221</sup> Section 54-35-10 was also amended by section 11 of House Bill No. 1001, chapter 1, and section 6 of House Bill No. 1106, chapter 453.

<sup>222</sup> Section 54-35-10 was also amended by section 11 of House Bill No. 1001, chapter 1, and section 5 of House Bill No. 1106, chapter 453.

**CHAPTER 454****SENATE BILL NO. 2310**

(Senators Stenehjem, O'Connell)  
(Representatives Berg, Boucher)

**LEGISLATIVE ASSEMBLY GIFTS AND DONATIONS**

AN ACT to create and enact a new section to chapter 54-03 of the North Dakota Century Code, relating to legislative authority to accept and expend donations; to provide a continuing appropriation; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 54-03 of the North Dakota Century Code is created and enacted as follows:

**Acceptance of gifts - Continuing appropriation.** The legislative assembly or either house of the legislative assembly may accept donations of funds. Funds received as a donation may be expended by the legislative assembly by concurrent resolution or the appropriate house upon motion. All funds under this section are appropriated as a continuing appropriation for the purposes contained in the concurrent resolution or motion approving the expenditure of the funds.

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

Approved April 9, 2007  
Filed April 10, 2007



**CHAPTER 455****HOUSE BILL NO. 1107**

(Government and Veterans Affairs Committee)  
(At the request of the Legislative Compensation Commission)

**MILEAGE REIMBURSEMENT**

AN ACT to amend and reenact subsections 1 and 5 of section 54-06-09 of the North Dakota Century Code, relating to mileage and travel expense reimbursement for state officials and employees.

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

**SECTION 1. AMENDMENT.** Subsections 1 and 5 of section 54-06-09 of the North Dakota Century Code are amended and reenacted as follows:

1. State officials, whether elective or appointive, and their deputies, assistants, and clerks, or other state employees, entitled by law to be reimbursed for mileage or travel expense, must be allowed and paid for mileage and travel expense the following amounts:
  - a. The sum of ~~thirty-seven and one-half~~ ~~forty-five~~ cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when the travel is by motor vehicle, the use of which is required by the employing entity. The sum of seventy cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when the travel is by private airplane. Mileage by private aircraft must be computed by actual air mileage when only one state employee or official is traveling; if two or more state employees or officials are traveling by private aircraft, the actual mileage must be based on the road mileage between the geographical points. Reimbursement for private airplane travel must be calculated as follows:
    - (1) If reimbursement is for one properly authorized and reimbursable passenger, reimbursement must be paid on a per mile basis as provided in this subsection.
    - (2) 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.
  - b. Except as provided in subdivision a, 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.

5. Notwithstanding the other provisions of this section, state employees permanently located outside the state or on assignments outside the state for an indefinite period of time, exceeding at least thirty consecutive days, must be allowed and paid ~~thirty-seven and one-half~~ forty-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 motor vehicle, and the three-hundred-mile [482.80-kilometer] restriction imposed by subsection 3 does not apply.

Approved April 23, 2007  
Filed April 24, 2007

**CHAPTER 456****SENATE BILL NO. 2276**

(Senators Wardner, Cook, Robinson)  
(Representatives Aarsvold, Damschen, Price)

**PREVENTION AND ADVISORY COUNCIL DUTIES AND  
APPROPRIATION**

AN ACT to provide duties of the governor's prevention and advisory council; and to provide an appropriation.

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

**SECTION 1. Governor's prevention and advisory council duties - Continuing appropriation.** The governor's prevention and advisory council shall contract with or grant funds to entities within this state to discourage impaired driving and alcohol and drug abuse by minors. The council may accept grants and gifts of any money, property, or service from any public or private source for the purposes of this section. Any funding obtained by the council, not otherwise appropriated, is appropriated on a continuing basis for the purposes of this section. Funding appropriated for the purpose of this section may not be used for costs associated with an initiated measure.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the community health trust fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much of the sum as may be necessary, to the governor for the purposes of section 1 of this Act, for the biennium beginning July 1, 2007, and ending June 30, 2009.

Approved May 4, 2007  
Filed May 4, 2007

**CHAPTER 457****HOUSE BILL NO. 1318**

(Representatives Wrangham, Skarphol)  
(Senators Freborg, Robinson, Wardner)

**STATE AUDITOR INFORMATION TECHNOLOGY  
RESPONSIBILITIES**

AN ACT to amend and reenact section 54-10-28 of the North Dakota Century Code, relating to information technology responsibilities of the state auditor.

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

**SECTION 1. AMENDMENT.** Section 54-10-28 of the North Dakota Century Code is amended and reenacted as follows:

**54-10-28. Information technology responsibilities.** The state auditor ~~shall~~ may:

1. Conduct information technology compliance reviews, as determined necessary by the information technology committee, by conducting individual agency audits of information technology management, information technology planning, compliance with information technology plans, and compliance with information technology standards and policies and conducting statewide agency audits of compliance with specific information technology standards and policies.
2. Consult with the information technology department on audits of compliance with information technology plans and compliance with information technology standards and policies.
3. Participate in the information technology department's enterprise architecture process for developing information technology standards and policies.
4. Monitor major information technology projects for compliance with project management and information technology standards and policies.
5. Present results of information technology compliance reviews to the information technology committee and the state information technology advisory committee.

Approved March 5, 2007

Filed March 6, 2007

**CHAPTER 458****SENATE BILL NO. 2053**

(Political Subdivisions Committee)

(At the request of the State Auditor)

**COMPUTER SYSTEM AUDITS**

AN ACT to amend and reenact section 54-10-29 of the North Dakota Century Code, relating to audits of computer systems performed by the state auditor.

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

**SECTION 1. AMENDMENT.** Section 54-10-29 of the North Dakota Century Code is amended and reenacted as follows:

**54-10-29. Audits of computer systems - Penalty.**

1. The state auditor may:
  - a. Pursuant to the powers and duties outlined in this chapter, conduct a review and assessment of computer systems and related security systems. Computer systems subject to this section include the computer systems of a state agency or political subdivision that is subject to audit by the state auditor. Tests conducted in connection with this review and assessment may include an assessment of system vulnerability, network penetration, potential security breach, and susceptibility to cyber attack or cyber fraud.
  - b. Disclose any findings to the chief information officer of the state or to any state official or legislative committee. Working papers and preliminary drafts of reports created in connection with the review of computer systems and the security of the systems are exempt from section 44-04-18. Those parts of findings and working papers that identify the methods of the state auditor or that may cause or perpetuate vulnerability of the computer system reviewed are exempt from section 44-04-18 and protected from disclosure until the state auditor directs otherwise.
  - c. Procure the services of a specialist in information security systems or other contractors deemed necessary in conducting a review under this section. The procurement of these services is exempt from the requirements of chapter 54-44.4.
2. An outside contractor hired to provide services in the review of the security of a computer system is subject to the confidentiality provisions of this section and section 44-04-27. Any individual who knowingly discloses confidential information is subject to the provisions of section 12.1-13-01.
3. The state auditor shall notify the executive officer of any state agency ~~or the governing body of any political subdivision~~ of the date, time, and location of any test conducted in connection with a review and assessment of computer systems or related security systems. The

executive officer or a ~~deputy executive officer or a member of the governing body of a political subdivision shall~~ the officer's designee may attend and observe any test during which confidential information may be accessed or controlled. ~~An executive officer, a deputy executive officer, or a member of the governing body of a political subdivision receiving notice of any test conducted under this section may not inform any other individual of the scheduling and conduct of the test.~~

4. The state auditor shall notify the attorney general of the date, time, and location of any test conducted in connection with a review and assessment of computer systems or related security systems. The attorney general may designate an individual to participate in the test. The designee of the attorney general may order the test to be terminated if the individual believes a sensitive system is being breached, a sensitive system may be breached, or sensitive information may be revealed.
5. Notwithstanding any provision in chapter 32-12.2 to the contrary, if the attorney general and the director of the office of management and budget determine it is in the best interest of the state, the state auditor may agree to limit the liability of a contractor performing a review and assessment under this section. The liability limitation must be approved by the attorney general and director of the office of management and budget in writing. For any uninsured losses, the director of the office of management and budget may approve the risk management fund to assume all or part of the contractor's liability to the state in excess of the limitation.
6. A state agency receiving federal tax information under section 6103 of the Internal Revenue Code, as amended [26 U.S.C. 6103], in conjunction with the state auditor, may enter a contract with the vendor selected by the state auditor under subdivision c of subsection 1 to conduct a review and assessment of the state agency's computer systems and related security systems, including an assessment of system vulnerability, network penetration, potential security breach, and susceptibility to cyber attack or cyber fraud.

Approved April 26, 2007

Filed April 27, 2007

**CHAPTER 459****HOUSE BILL NO. 1330**

(Representatives Carlisle, DeKrey, Delmore)  
(Senators Grindberg, Lyson, Robinson)

**DRUG TASK FORCE GRANT FUND**

AN ACT to create and enact a new section to chapter 54-12 of the North Dakota Century Code, relating to the attorney general multijurisdictional drug task force grant fund; to amend and reenact sections 53-12.1-09 and 54-12-14 of the North Dakota Century Code, relating to disbursements from the lottery operating fund and the assets forfeiture fund; to provide a continuing appropriation; and to declare an emergency.

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

<sup>223</sup> **SECTION 1. AMENDMENT.** Section 53-12.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**53-12.1-09. Operating fund - Continuing appropriation - Authorization of disbursements - Report - Net proceeds.** There is established within the state treasury the lottery operating fund into which must be deposited all revenue from the sale of tickets, interest received on money in the fund, and all other fees and moneys collected, less a prize on a winning ticket or lottery promotion paid by a retailer and the retailer's commission. Except for moneys in the lottery operating fund appropriated by the legislative assembly for administrative and operating costs of the lottery under section 53-12.1-10, all other money in the fund is continuously appropriated for the purposes specified in this section. During each regular session, the attorney general shall present a report to the appropriations committee of each house of the legislative assembly on the actual and estimated expenditures for the current biennium and projected expenditures for the subsequent biennium authorized by this section. A payment of a prize or expense or transfer of net proceeds by the lottery may be made only against the fund or money collected from a retailer on the sale of a ticket. A disbursement from the fund must be for the following purposes:

1. Payment of a prize as the director deems appropriate to the owner of a valid, winning ticket;
2. Payment of a gaming system or related service expense, game group dues, and retailer commissions; and
3. Transfer of net proceeds:
  - a. Starting July 1, 2005, fifty thousand dollars must be transferred to the state treasurer each quarter for deposit in the compulsive gambling prevention and treatment fund;

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<sup>223</sup> Section 53-12.1-09 was also amended by section 4 of Senate Bill No. 2101, chapter 450.

- b. An amount for the lottery's share of a game's prize reserve pool must be transferred to the multistate lottery association; ~~and~~
- c. Starting July 1, 2007, one hundred five thousand six hundred twenty-five dollars must be transferred to the state treasurer each quarter for deposit in the attorney general multijurisdictional drug task force grant fund; and
- d. The balance of the net proceeds, less holdback of any reserve funds the director may need for continuing operations, must be transferred to the state treasurer on at least an annual basis for deposit in the state general fund.

**SECTION 2.** A new section to chapter 54-12 of the North Dakota Century Code is created and enacted as follows:

**Attorney general multijurisdictional drug task force grant fund - Continuing appropriation.**

- 1. The attorney general may establish a multijurisdictional drug task force grant fund. The fund consists of funds appropriated by the legislative assembly. The funds are appropriated as a standing and continuing appropriation to the attorney general for the purpose of defraying the expenses and operating costs incurred by a multijurisdictional drug task force. The attorney general shall develop guidelines for the qualifications for receipt of grant funds, the disbursement of grant funds, and the necessary accounting procedures for the use of grant funds. In this section, "multijurisdictional drug task force" means a law enforcement task force:
  - a. Organized and created in this state by a written mutual aid or joint powers agreement;
  - b. Comprised of persons who are employed by, or acting under the authority of, different governmental entities, including federal, state, county, or municipal governments, or any combination of these agencies; and
  - c. Operated and established to enhance and facilitate interagency coordination, acquisition of intelligence information, and investigations of controlled substance and other drug-related crimes.
- 2. If the attorney general receives federal funds in excess of the year 2006 level of Byrne grant funding that may be used to defray the expenses and operating costs incurred by a multijurisdictional task force during the 2007-09 biennium, the attorney general may seek emergency commission approval to receive and spend the additional federal funds but may not spend moneys from the funds appropriated by the legislative assembly to the extent of the additional federal funds received for this purpose for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 3. AMENDMENT.** Section 54-12-14 of the North Dakota Century Code is amended and reenacted as follows:



**54-12-14. Assets forfeiture fund - Created - Purpose - Continuing appropriation.** The attorney general assets forfeiture fund consists of funds appropriated by the legislative assembly and additional funds obtained from moneys, assets, and proceeds seized and forfeited pursuant to section 19-03.1-36, amounts received through court proceedings as restitution, ~~and~~ amounts remaining from the forfeiture of property after the payment of expenses for forfeiture and sale authorized by law, and amounts received from a multijurisdictional drug task force as defined in section 2 of this Act. The amount of deposits into the fund which do not come from legislative appropriation or from a multijurisdictional drug task force and are not payable to another governmental entity may not exceed two hundred thousand dollars within a biennium and any moneys in excess of that amount must be deposited in the general fund. The funds are appropriated, as a standing and continuing appropriation, to the attorney general for the following purposes:

1. For obtaining evidence for enforcement of any state criminal law or law relating to the control of drug abuse.
2. For repayment of rewards to qualified local programs approved under section 12.1-32-02.2, if the information that was reported to the qualified local program substantially contributed to forfeiture of the asset, and for paying, at the discretion of the attorney general, rewards for other information or assistance leading to a forfeiture under section 19-03.1-36.
3. For paying, at the discretion of the attorney general, any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited pursuant to section 19-03.1-36, or of any other necessary expenses incident to the seizure, detention, or forfeiture of such property.
4. For equipping, for law enforcement functions, forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the state board of pharmacy or a law enforcement agency.
5. For paying, at the discretion of the attorney general, overtime compensation to agents of the bureau of criminal investigation and drug enforcement unit incurred as a result of investigations of violations of any state criminal law or law relating to the control of drug abuse.
6. For paying matching funds required to be paid as a condition for receipt of funds from a federal government program awarding monetary grants or assistance for the investigation, apprehension, or prosecution of persons violating the provisions of chapter 19-03.1.

The attorney general shall, with the concurrence of the director of the office of management and budget, establish the necessary accounting procedures for the use of the fund, and shall personally approve, in writing, all requests from the director of the bureau of criminal investigation or the director of the drug enforcement unit for the use of the fund.

**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 30, 2007  
Filed May 1, 2007

**CHAPTER 460****SENATE BILL NO. 2097**

(Industry, Business and Labor Committee)  
(At the request of the Attorney General)

**FIRE MARSHAL FEES**

AN ACT to amend and reenact sections 7 and 8 of chapter 3 of the 2005 Session Laws, relating to state fire marshal fees; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Sections 7 and 8 of chapter 3 of the 2005 Session Laws are amended and reenacted as follows:

**SECTION 7. FIRE AND TORNADO FUND - FEES.** The attorney general shall charge and collect fees for services provided by the state fire marshal program to entities covered by the fire and tornado fund under chapter 26.1-22. Fees under this section may be collected in amounts of up to a total of ~~\$340,000~~ \$426,920 for the biennium beginning July 1, 2005, and ending June 30, 2007. All fees collected under this section must be deposited in the attorney general's operating fund.

**SECTION 8. PETROLEUM RELEASE COMPENSATION FUND - FEES.** The attorney general shall charge and collect fees for services provided by the state fire marshal program to entities covered by the petroleum release compensation fund under chapter 23-37. Fees under this section may be collected in amounts of up to a total of ~~\$35,000~~ \$42,900 for the biennium beginning July 1, 2005, and ending June 30, 2007. All fees collected under this section must be deposited in the attorney general's operating fund.

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

Approved March 2, 2007  
Filed March 2, 2007

**CHAPTER 461****HOUSE BILL NO. 1503**

(Representatives Charging, Berg, Froelich, Onstad)  
(Senators Marcellais, Warner)

**TRIBAL-STATE GUARANTY PROGRAM EXTENDED**

AN ACT to amend and reenact section 54-17-37 of the North Dakota Century Code, relating to extending the tribal-state guaranty program; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 54-17-37 of the North Dakota Century Code is amended and reenacted as follows:

**54-17-37. (Effective through ~~June 30, 2007~~ July 31, 2011) Tribal-state guaranty program - Continuing appropriation.**

1. The industrial commission shall establish at the Bank of North Dakota a guaranty program for a business located in the state which contracts with a business located in the state which is either owned by one of the five North Dakota Indian tribes or which is an American Indian-owned small business located in this state. The industrial commission shall establish program guidelines and shall establish program application forms. The industrial commission shall adopt policies and procedures as necessary to implement this program. The Bank of North Dakota may charge fees to participants in the program. The industrial commission shall limit participation in the program so that the cumulative value of the guaranteed portion of the receivables under the program does not exceed five million dollars at any one time.
2. In the case of a payment dispute, the program must provide a participating North Dakota business with sure and certain payment of receivable owing under the contract between the North Dakota business and the tribal-owned or Indian-owned business. Any litigation over a payment dispute must be conducted by the participating businesses and is not the responsibility of the industrial commission, the Bank of North Dakota, or this guaranty program. The industrial commission shall establish a guaranty reserve board. The board membership, which may not exceed twelve members, consists of the attorney general or the attorney general's representative, who serves as chairman of the board; the president of the Bank of North Dakota or the president's representative; one representative for each participating tribal government; and representatives of private business equal to the number of tribal government representatives serving on the board. Each North Dakota Indian tribe that participates in the program may appoint one board member to serve a two-year term. A tribally appointed member serves at the pleasure of the appointing tribal government. The board members representing private business serve two-year terms to run concurrently with the corresponding tribally appointed member. The members of the industrial commission shall take turns appointing the board members representing private business,

in the following order: governor, attorney general, and agriculture commissioner. Each member representing private business serves at the pleasure of the industrial commission and any vacant position must be filled by an individual appointed by the member of the industrial commission making the original appointment. The board must meet annually, or more often as may be determined necessary by the chairman, for the purpose of reviewing participation in the program and conducting the business of the board.

3. To participate in the program, all parties must agree that for purposes of the program and related business contract issues any claim or dispute between any of the parties are governed by the laws of the state of North Dakota and any claim or dispute between the parties must be brought in Burleigh County district court in Bismarck or by agreement of the parties may be brought to a mutually agreed-upon arbitrator. To participate in the program, the business owned by a North Dakota Indian tribe or the Indian-owned small business must have secured the pledge of a North Dakota Indian tribe or a tribally approved entity to guarantee repayment to the guaranty program for any payments made due to payment disputes. This repayment guarantee must be consistent with the policies and procedures established by the industrial commission to implement this program.
4. If the Bank of North Dakota provides a North Dakota business with a payment due to a payment dispute, as a guarantor the board is an assignee and as such may seek reimbursement from a third party or from the North Dakota business for any payment made under the program.

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

Approved April 10, 2007  
Filed April 11, 2007

**CHAPTER 462****HOUSE BILL NO. 1515**

(Representatives Monson, Porter)

(Senator Olafson)

**BIOMASS INCENTIVE AND RESEARCH PROGRAM**

AN ACT to create and enact a new section to chapter 20.1-02, a new section to chapter 54-17, and, if Senate Bill No. 2288 of the sixtieth legislative assembly becomes effective, a new section to chapter 54-17 of the North Dakota Century Code, relating to establishment of a private land open to sportsmen biomass demonstration project, the duty of the industrial commission to establish a biomass incentive and research program, and to establish a biomass incentive and research fund; to provide a transfer; and to provide an appropriation.

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

**SECTION 1.** A new section to chapter 20.1-02 of the North Dakota Century Code is created and enacted as follows:

**Private land open to sportsmen program - Biomass demonstration project.** The department may develop and make available, as part of the broader support for establishment cost-share provided through the industrial commission, a special demonstration component of the private land open to sportsmen program to support perennial grass stand establishment of participating acres in return for public access to hunting and adherence to conservation best practices, including postseason harvest, minimum stubble height, and nonannual harvest. The demonstration project may include an evaluation component to assess the effects and compatibility of perennial biomass harvest with the habitat and public access objectives of the private land open to sportsmen program.

**SECTION 2.** If Senate Bill No. 2288 of the sixtieth legislative assembly does not become effective, a new section to chapter 54-17 of the North Dakota Century Code is created and enacted as follows:

**Biomass incentive and research program.** The industrial commission may:

1. Establish an incentive program to assist the agricultural community to demonstrate the production, harvest, storage, and delivery of a biomass feedstock on a commercial scale to a private sector end-user.
2. Establish a project on a scale sufficient to enable at least one group of cooperating agricultural producers, and preferably two groups in different regions of the state, to produce, harvest, store, and deliver biomass feedstock to an end-user at commercial scale.
3. Give priority on a perennial grass feedstock due to the state's resource potential, although residual feedstocks are eligible for consideration.
4. Establish procedures for competitive applications by cooperating agricultural producers organized through a limited liability corporation.

cooperative, or other appropriate ownership structure, that can demonstrate in their application the commitment of a commercial end-user to purchase the biomass produced and adequate technical support to accomplish the biomass production, harvest, storage, and delivery to that end-user.

5. Provide funds for incentives, including producer payments to provide income support during the critical biomass stand establishment period of two years without harvest, in the case of native grasses, or other perennial biomass crops.
6. Ensure that activities enumerated in this section qualify for the agriculture partnership in assisting community expansion program.
7. Arrange for the provision of technical assistance services determined by participating producers in their application to the industrial commission.
8. Provide incentive support targeted to producer entities that successfully apply to the industrial commission rather than the commercial biomass end-user.
9. Provide funds for a front-end engineering and design study for a cellulosic ethanol and nanowiskers project.
10. Work in cooperation with the game and fish department to establish a private land open to sportsmen program biomass demonstration project.

**SECTION 3.** If Senate Bill No. 2288 is approved by the legislative assembly and becomes effective, a new section to chapter 54-17 of the North Dakota Century Code is created and enacted as follows:

**Biomass incentive and research program.** The industrial commission in coordination with the renewable energy council may:

1. Establish an incentive program to assist the agricultural community to demonstrate the production, harvest, storage, and delivery of a biomass feedstock on a commercial scale to a private sector end user.
2. Establish a project on a scale sufficient to enable at least one group of cooperating agricultural producers, and preferably two groups in different regions of the state, to produce, harvest, store, and deliver biomass feedstock to an end user at commercial scale.
3. Give priority on a perennial grass feedstock due to the state's resource potential, although residual feedstocks are eligible for consideration.
4. Establish procedures for competitive applications by cooperating agricultural producers organized through a limited liability corporation, cooperative, or other appropriate ownership structure, that can demonstrate in their application the commitment of a commercial end user to purchase the biomass produced and adequate technical support to accomplish the biomass production, harvest, storage, and delivery to that end user.
5. Provide funds for incentives, including producer payments to provide income support during the critical biomass stand establishment period

of two years without harvest, in the case of native grasses, or other perennial biomass crops.

6. Ensure that activities enumerated in this section qualify for the agriculture partnership in assisting community expansion program.
7. Arrange for the provision of technical assistance services determined by participating producers in their application to the industrial commission.
8. Provide incentive support targeted to producer entities that successfully apply to the industrial commission rather than the commercial biomass end user.
9. Provide funds for a front-end engineering and design study for a cellulosic ethanol and nanowhiskers project.
10. Work in cooperation with the game and fish department to establish a private land open to sportsmen program biomass demonstration project.

**SECTION 4.** A new section to chapter 54-17 of the North Dakota Century Code is created and enacted as follows:

**Biomass incentive and research fund.** The biomass incentive and research fund is a special fund in the state treasury. The industrial commission shall establish the guidelines and procedures for use of the fund. All earnings of the fund must be credited to the fund.

**SECTION 5. TRANSFER - APPROPRIATION.** The industrial commission may transfer up to \$1,000,000 from the beginning farmer revolving loan fund located at the Bank of North Dakota and up to \$1,000,000 from the biofuel partnership in assisting community expansion fund to the biomass incentive and research fund. The funds are appropriated for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 6. ORGANIC ADVISORY BOARD - GRANT.** The industrial commission may grant up to \$30,000 from the biomass incentive and research fund to the agriculture commissioner to support organic agriculture initiatives and programs during the biennium beginning July 1, 2007, and ending June 30, 2009.

Approved April 27, 2007  
Filed April 30, 2007

**CHAPTER 463****HOUSE BILL NO. 1439**

(Representatives Weiler, S. Meyer, Nelson)  
(Senators Heitkamp, Nelson, Wanzek)

**OIL AND GAS RESEARCH COUNCIL MEMBERSHIP**

AN ACT to amend and reenact subsections 1 and 4 of section 54-17.6-05 of the North Dakota Century Code, relating to the membership of the oil and gas research council.

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

**SECTION 1. AMENDMENT.** Subsections 1 and 4 of section 54-17.6-05 of the North Dakota Century Code are amended and reenacted as follows:

1. The oil and gas research council is composed of ~~seven~~ eight members, four of whom must currently be engaged in and have at least five years of active experience in the oil and natural gas exploration and production industry. The council consists of:
  - a. Four members appointed by the governor from a list provided by the North Dakota petroleum council. The governor may reject the list and request the council to submit a new list until the appointments are made.
  - b. One member appointed by the governor from a list provided by the North Dakota association of oil and gas producing counties. The governor may reject the list and request the association to submit a new list until the appointment is made.
  - c. The executive director of the North Dakota petroleum council, or the executive director's designee.
  - d. The president of the northern alliance of independent producers or the president's designee.
  - e. A county commissioner from an oil producing county appointed by the governor.
  - ~~e.~~ f. The director of the oil and gas division and the state geologist shall serve on the council as advisory nonvoting members.
4. The council shall have at least one regular meeting each year and such additional meetings as the chairman determines necessary at a time and place to be fixed by the chairman. Special meetings must be called by the chairman on written request of any three members. ~~Four~~ Five members constitute a quorum.

Approved March 13, 2007  
Filed March 14, 2007



**CHAPTER 464****HOUSE BILL NO. 1128**

(Government and Veterans Affairs Committee)  
(At the request of the Industrial Commission)

**PIPELINE AUTHORITY**

AN ACT to create and enact chapter 54-17.7 and a new section to chapter 57-06 of the North Dakota Century Code, relating to the North Dakota pipeline authority, to provide for the planning, constructing, owning, financing, maintaining, operating, and disposing of pipeline facilities and related infrastructure, to authorize issuance of revenue bonds, and a tax exemption for pipeline facilities; to amend and reenact subdivision 1 of subsection 2 of section 28-32-01, subsection 5 of section 54-44.4-02, subsection 2 of section 54-60.1-01, and section 57-51.1-07.3 of the North Dakota Century Code, relating to Administrative Agencies Practice Act exemption for the pipeline authority, and procurement, business incentive exception, and deposits to the oil and gas research fund; to provide a continuing appropriation; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subdivision 1 of subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

- I. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, public finance authority, North Dakota mill and elevator association, North Dakota farm finance agency, ~~and~~ the North Dakota transmission authority, and the North Dakota pipeline authority.

<sup>224</sup> **SECTION 2.** Chapter 54-17.7 of the North Dakota Century Code is created and enacted as follows:

**54-17.7-01. North Dakota pipeline authority.** There is created the North Dakota pipeline authority, which shall be governed by the industrial commission.

**54-17.7-02. Definitions.** As used in this chapter:

1. "Authority" means the industrial commission acting as the North Dakota pipeline authority.
2. "Commission" means the North Dakota industrial commission.
3. "Energy-related commodities" means any substance, element, or compound, either gaseous, liquid, or solid, associated with the production, refining, or processing of renewable energy, crude oil,

<sup>224</sup> Section 54-17.7-08 was amended by section 1 of Senate Bill No. 2077, chapter 565.

natural gas, coal, or coal byproducts, including oil, natural gas liquids, refined petroleum products, carbon dioxide, hydrogen, ethanol, propane, butane, ethane, methane, sulfur, helium, synthetic fuels, nitrogen, biodiesel, and liquids made from coal.

4. "Natural gas" means hydrocarbons or nonhydrocarbons that at atmospheric conditions of temperature and pressure are in a gaseous phase.
5. "Notice of intent" means the notice a person delivers to the authority indicating willingness to construct pipeline facilities contemplated by the authority or to provide services fulfilling the need for such pipeline facilities.
6. "Pipeline facilities" means pipelines, pumps, compressors, storage, and all other facilities, structures and properties incidental and necessary or useful in the transportation, distribution, and delivery of energy-related commodities to points of sale or consumption or to the point or points of distribution for consumption located within and without this state.
7. "Project area" means the geographic area in which construction of a pipeline facility contemplated by the authority is likely to occur.

**54-17.7-03. Pipeline authority purposes.** The authority is created for the purpose of diversifying and expanding the North Dakota economy by facilitating development of pipeline facilities to support the production, transportation, and utilization of North Dakota energy-related commodities, thereby increasing employment, stimulating economic activity, augmenting sources of tax revenue, fostering economic stability, and improving the state's economy.

**54-17.7-04. Powers.** The authority has all powers necessary to carry out the purposes of this chapter, including the power to:

1. Make grants or loans and to provide other forms of financial assistance as necessary or appropriate for the purposes of this chapter.
2. Make and execute contracts and all other instruments necessary or convenient for the performance of the authority's powers and functions.
3. Acquire, purchase, hold, use, lease, license, sell, transfer, and dispose of an undivided or other interest in or the right to capacity in any pipeline system or systems within or without the state of North Dakota in order to facilitate the production, transportation, distribution, or delivery of energy-related commodities produced in North Dakota as a purchaser of last resort. The obligation of the state may not exceed ten percent of the pipeline authority's acquisition or purchase of a right to capacity in any pipeline system or systems and the state's obligation is limited to the funding available from the oil and gas research fund.
4. Borrow money and issue evidences of indebtedness as provided in this chapter.
5. Receive and accept aid, grants, or contributions of money or other things of value from any source, including aid, grants, or contributions from any department, agency, or instrumentality of the United States,

subject to the conditions upon which the aid, grants, or contributions are made and consistent with the provisions of this chapter.

6. Issue and sell evidences of indebtedness in an amount or amounts as the authority may determine, but not to exceed eight hundred million dollars, plus costs of issuance, credit enhancement, and any reserve funds required by agreements with or for the benefit of holders of the evidences of indebtedness for the purposes for which the authority is created under this chapter, provided that the amount of any refinancing shall not be counted toward such eight hundred million dollar limitation to the extent it does not exceed the outstanding amount of the obligations being refinanced.
7. Refund and refinance its evidences of indebtedness.
8. Make and execute interest rate exchange contracts.
9. Enter lease-sale contracts.
10. Pledge any and all revenues derived by the authority under this chapter or from a pipeline facility, service, or activity funded under this chapter to secure payment or redemption of the evidences of indebtedness.
11. To the extent and for the period of time necessary for the accomplishment of the purposes for which the authority was created plan, finance, develop, acquire, own in whole or in part, lease, rent, and dispose of pipeline facilities.
12. Enter contracts to construct, maintain, and operate pipeline facilities.
13. Consult with the public service commission, regional organizations, and any other relevant state or federal authority or persons as necessary and establish reasonable fees, rates, tariffs, or other charges for pipeline facilities and all services rendered by the authority.
14. Lease, rent, and dispose of pipeline facilities owned pursuant to this chapter.
15. Investigate, plan, prioritize, and propose corridors for the transport of energy-related commodities.
16. Make and execute contracts and all other instruments necessary or convenient for the performance of the authority's powers and functions with other state pipeline authorities.
17. Cooperate with and participate in joint projects, research projects, and other activities with other state pipeline authorities and participate in and join regional pipeline organizations.
18. Do any and all things necessary or expedient for the purposes of the authority provided in this chapter.

**54-17.7-05. Authority may act.**

1. Before exercising its powers to construct pipeline facilities granted to it in this chapter except for subsection 3 of section 54-17.7-04, the

authority shall publish in a newspaper of general circulation in North Dakota and in a newspaper in the project area a notice describing the need for pipeline facilities contemplated by the authority. A person willing to construct the pipeline facilities or furnish services to satisfy the needs described in the notice has a period of one hundred eighty days from the date of last publication of the notice within which to delivery to the authority a notice of intent. After receipt of a notice of intent, the authority may not exercise its powers to construct pipeline facilities unless the authority finds that exercising its authority would be in the public interest. In making such a finding, the authority shall consider factors, including economic impact to the state, economic feasibility, technical performance, reliability, past performance, and the likelihood of successful completion and ongoing operation.

2. The authority may require a person giving a notice of intent to provide a bond and to submit a plan for completion of the pipeline facilities or commencement of services within a period of time acceptable to the authority. If no person submits an adequate plan or bond as required by the authority, the authority may proceed with contracting for construction of the facility described in the authority's published notice.

**54-17.7-06. Authority may participate upon request.** The authority may participate in a pipeline facility through financing, planning, joint ownership, or other arrangements at the request of a person giving a notice of intent.

**54-17.7-07. Evidences of indebtedness.**

1. Evidences of indebtedness of the authority must be authorized by resolution of the industrial commission and may be issued in one or more series and must bear such date or dates, mature at such time or times, bear interest at such rate or rates of interest per year, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable from such sources in such medium of payment at such place or places within or without the state, and be subject to such terms of redemption, with or without premium, as such resolution or resolutions may provide. Evidences of indebtedness of the authority are to mature not more than forty years from the date of issue. Evidences of indebtedness of the authority may be sold at such time or times and at such price or prices as the authority determines.
2. Evidences of indebtedness and grants, loans, or other forms of financial assistance issued by the authority are payable solely from:
  - a. Revenues that may be received by the authority from pipeline facilities, services, or activities funded under this chapter with the proceeds of the authority's evidences of indebtedness, subject only to prior payment of the reasonable and necessary expenses of operating and maintaining such pipeline facilities except depreciation.
  - b. Amounts received by the authority under loans authorized under this chapter.

- c. Revenues received by the authority under this chapter from any source other than general tax revenues.
  3. The evidences of indebtedness are not subject to taxation by the state or any of its political subdivisions and do not constitute a debt of the state of North Dakota within the meaning of any statutory or constitutional provision and must contain a statement to that effect on their face.
  4. The authority may establish and maintain a reserve fund for evidences of indebtedness issued under this chapter. There must be deposited in the reserve fund:
    - a. All moneys appropriated by the legislative assembly to the authority for the purpose of the reserve fund.
    - b. All proceeds of evidences of indebtedness issued under this chapter required to be deposited in the reserve fund by the terms of any contract between the authority and the holders of its evidences of indebtedness or any resolution of the authority.
    - c. Any lawfully available moneys of the authority which it may determine to deposit in the reserve fund.
    - d. Any moneys from any other source made available to the authority for deposit in the reserve fund or any contractual right to the receipt of moneys by the authority for the purpose of the fund, including a letter of credit, surety bond, or similar instrument.
  5. The authority must include in its biennial request to the office of the budget the amount, if any, necessary to restore any reserve fund established under this section to an amount equal to the amount required to be deposited in the fund by the terms of any contract or resolution approved by the commission.
  6. Any pledge of revenue made by the industrial commission as security for the authority's evidences of indebtedness is valid and binding from time to time when the pledge is made. The revenues or other moneys so pledged and thereafter received by the authority are immediately subject to the lien of any such pledge without any physical delivery thereof or further act, and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, regardless of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded except in the records of the authority.
  7. The authority may obtain from any entity of the state, any department or agency of the United States, or any nongovernmental insurer, any insurance, guaranty, or liquidity facility, or from a financial institution, a letter of credit to the extent such insurance, guaranty, liquidity facility, or letter of credit now or hereafter available, as to, or for, the payment or repayment of, interest or principal, or both, or any part thereof, on any evidences of indebtedness issued by the authority pursuant to this chapter, and may enter into any agreement or contract with respect to any such insurance, guaranty, letter of credit, or liquidity facility, and pay

any required fee, unless the same would impair or interfere with the ability of the authority to fulfill the terms of any agreement made with the holders of its evidences of indebtedness.

8. After issuance, all evidences of indebtedness of the authority are conclusively presumed to be fully authorized and issued under the laws of the state, and any person or governmental unit is estopped from questioning their authorization, sale, issuance, execution, or delivery by the authority.
9. When the authority has issued evidences of indebtedness and pledged the revenues of the pipeline facilities for the payment thereof as herein provided, the authority shall operate and maintain the pipeline facilities and shall impose and collect fees and charges for the services furnished by the pipeline facilities, including those furnished to the authority itself, in the amounts and at the rates as are fully sufficient at all times to:
  - a. Pay the expenses of operating and maintaining the pipeline facilities.
  - b. Provide a debt service fund sufficient to assure the prompt payment of principal and interest on the evidences of indebtedness at maturity.
  - c. Provide a reasonable fund for contingencies as may be required by the resolution authorizing the evidences of indebtedness.

**54-17.7-08. Public service commission jurisdiction and consultation.**

1. Until sold or disposed of by the authority, the authority and the pipeline facilities built under this chapter are exempt from the provisions of title 49 except for chapter 49-22 and section 49-02-01.2. Upon sale or disposal by the authority, pipeline facilities built under this chapter are subject to the provisions of title 49.
2. The authority shall consult with the public service commission with respect to the rates charged by the authority for use of its pipeline facilities and such rates must thereafter be considered just and reasonable in proceedings before the public service commission pursuant to section 49-05-06.
3. The authority shall conduct its activities in consultation with pipeline providers, the oil and gas research council, energy-related commodities interests, and other persons having relevant expertise.

**54-17.7-09. Bonds as legal investments.** The bonds of the authority are legal investments which may be used as collateral for public funds of the state, insurance companies, banks, savings and loan associations, credit unions, investment companies, trustees, and other fiduciaries which may properly and legally invest funds in their control or belonging to them in bonds of the authority. The state investment board may invest in bonds of the authority in an amount specified by the state investment board.

**54-17.7-10. Disposal of pipeline facilities.**

1. Before becoming an owner or partial owner of a pipeline facility or acquiring capacity in a pipeline system, the authority shall develop a plan identifying:
  - a. The public purposes of the authority's ownership or capacity acquisition.
  - b. Conditions that would make the authority's ownership no longer necessary for accomplishing those public purposes.
  - c. A plan to divest the authority's ownership or capacity interest as soon as economically prudent once those conditions occur.
2. For pipeline facilities that are leased to another entity by the authority at the end of the lease, absent default by the lessee, the authority shall convey its interest in the pipeline facilities to the lessee.
3. For pipeline facilities that are owned by the authority without a lessee, the authority shall divest itself of ownership as soon as economically prudent in accordance with the divestiture plan developed pursuant to subsection 1.

**54-17.7-11. Pipeline authority administrative fund - Continuing appropriation.** There is created a pipeline authority administrative fund.

1. Revenue to the fund must include:
  - a. Moneys received from the state's oil and gas research council administrative budget.
  - b. Moneys received from any federal agency for the purpose of this section.
  - c. Moneys donated to the pipeline authority for the purposes of this section.
  - d. Moneys received from the state's oil and gas impact fund.
  - e. Such other moneys as may be deposited in the fund for use in carrying out the purposes of the authority.
2. This fund must be maintained as a special fund and all moneys transferred into the fund are appropriated on a continuing basis and must be used and disbursed solely for the purpose of defraying the administrative costs incurred by the pipeline authority.
3. Utilizing funds from the oil and gas research fund, the industrial commission shall contract for or hire staffing necessary to effectively administer the pipeline authority.

**54-17.7-12. Access to authority records.**

1. Materials and data submitted to, or made or received by, the authority, to the extent that the authority determines the materials or data consist of trade secrets or commercial, financial, or proprietary information of individuals or entities applying to or contracting with the authority or receiving authority services under this chapter are subject to section 44-04-18.4.
2. A person or entity must file a request with the authority to have material designated as confidential under subsection 1. The request must contain any information required by the authority, and must include at least:
  - a. A general description of the nature of the information sought to be protected.
  - b. An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons.
  - c. An explanation of why the information is not readily ascertainable by proper means by other persons.
  - d. A general description of any person or entity that may obtain economic value from disclosure or use of the information and how the person or entity may obtain this value.
  - e. A description of the efforts used to maintain the secrecy of the information.
  - f. The fact that a request has been made is exempt.
3. The information submitted pursuant to subsection 2 is confidential. The authority shall examine the request and determine whether the information is relevant to the matter at hand and is a trade secret under the definition in section 47-25.1-01 or 44-04-18.4. If the authority determines the information is either not relevant or not a trade secret, the authority shall notify the requester and the requester may ask for the return of the information and request within ten days of the notice. If no return is sought, the information and request are a public record.

**54-17.7-13. Reporting requirements.** The authority shall deliver a written report on its activities to the legislative council each biennium. The authority is not subject to the requirements of chapter 54-60.1, but to ensure public accountability, the authority shall provide an annual report to the industrial commission detailing activities and expenditures incurred during the preceding year.



<sup>225</sup> **SECTION 3. AMENDMENT.** Subsection 5 of section 54-44.4-02 of the North Dakota Century Code is amended and reenacted as follows:

5. Procurements through a contract or other instrument executed by the industrial commission under ~~chapter~~ chapters 54-17.5, 54-17.6, and 54-17.7.

<sup>226</sup> **SECTION 4. AMENDMENT.** Subsection 2 of section 54-60.1-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Business incentive" means a state or political subdivision direct cash transfer, loan, or equity investment; contribution of property or infrastructure; reduction or deferral of any tax or any fee; guarantee of any payment under any loan, lease, or other obligation; or preferential use of government facilities given to a business. To be considered a business incentive, the total assistance in all forms must be valued at twenty-five thousand dollars or more. Unless specifically provided otherwise, the term does not include:
  - a. Assistance that is generally available to all businesses or to a general class of similar businesses, such as a line of business, size, or similar criteria.
  - b. Incentives resulting from Bank of North Dakota programs unless the incentive is a direct interest rate buydown, is made pursuant to the beginning entrepreneur loan guarantee program, or is an investment made pursuant to the North Dakota alternative and venture capital investments and early-stage capital funds program.
  - c. Public improvements to buildings or lands owned by the state or political subdivision which serve a public purpose and do not principally benefit a single business or defined group of businesses at the time the improvements are made.
  - d. Assistance provided for the sole purpose of renovating old or decaying building stock or bringing such building stock up to code and assistance provided for designated historic preservation districts, provided that the assistance does not exceed seventy-five percent of the total cost.
  - e. Assistance to provide job readiness and training services if the sole purpose of the assistance is to provide those services.
  - f. Assistance for housing.
  - g. Assistance for pollution control or abatement.

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<sup>225</sup> Section 54-44.4-02 was also amended by section 6 of House Bill No. 1060, chapter 314, section 6 of House Bill No. 1127, chapter 413, and section 7 of Senate Bill No. 2019, chapter 45.

<sup>226</sup> Section 54-60.1-01 was also amended by section 39 of House Bill No. 1018, chapter 18, and section 1 of House Bill No. 1095, chapter 494.

- h. Assistance for energy conservation.
- i. Tax reductions resulting from conformity with federal tax law.
- j. Benefits derived from regulation.
- k. Indirect benefits derived from assistance to educational institutions.
- l. Except for a center of excellence award under chapter 15-69, assistance for a collaboration between a North Dakota institution of higher education and a business.
- m. Redevelopment if the recipient's investment in the purchase of the site and in site preparation is seventy percent or more of the assessor's current year's estimated market value.
- n. General changes in tax increment financing law and other general tax law changes of a principally technical nature.
- o. Federal assistance provided through the state or a political subdivision until the assistance has been repaid to, and reinvested by, the state or political subdivision.
- p. Federal or state assistance for the lignite research, development, and marketing program under chapter 54-17.5.
- q. Federal or state assistance for the oil and gas research, development, and marketing program under chapter 54-17.6.

**SECTION 5.** A new section to chapter 57-06 of the North Dakota Century Code is created and enacted as follows:

**Pipeline authority exemption** Property, not including land, is exempt from taxation during construction and for the first ten full taxable years following initial operation if it consists of a pipeline owned by the authority and constructed after 2006, and necessary associated equipment for the transportation or storage of energy-related commodities if constructed under chapter 54-17.7. Pipeline facilities property described in subsection 6 of section 54-17.7-02 is subject to payments in lieu of property taxes during the time it is exempt from taxation. For the purpose of these payments, pipeline facilities property described in subsection 6 of section 54-17.7-02, whether or not it crosses multiple geographic taxing districts, must be valued annually by the state board of equalization and certified in the manner that other pipeline valuations are certified. The county auditor shall calculate taxes on the pipeline facilities property described in subsection 6 of section 54-17.7-02 in the same manner that taxes are calculated on other pipeline property. Not later than December twenty-sixth of each year, each county auditor shall submit a statement of the amount of taxes that would have been assessed against pipeline facilities property exempted under this section to the state treasurer for payment. The state treasurer shall make the required payment to each county not later than March first of the following year, and the county auditor shall distribute the payments to the political subdivisions in which the exempt pipeline facilities property is located.

**SECTION 6. AMENDMENT.** Section 57-51.1-07.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-51.1-07.3. Oil and gas research fund - Deposits - Continuing appropriation.** There is established a special fund in the state treasury to be known as the oil and gas research fund. ~~In the 2003-05 biennium, the first fifty thousand dollars of revenue from the state's share of the oil and gas production tax and oil extraction tax must be deposited into a special fund known as the oil and gas research fund. In the 2003-05 biennium, if actual revenues for the 2001-03 biennium from the state general fund share of the oil and gas production tax and oil extraction tax exceeded seventy-one million sixty-four thousand dollars, the excess up to five hundred thousand dollars must be deposited in a special fund known as the oil and gas research fund, as provided in this section. After the 2003-05 biennium, two~~ Two percent of the state's share of the oil and gas gross production tax and oil extraction tax revenues ~~that are deposited into the state general fund, up to one~~ three million ~~three hundred thousand~~ dollars per biennium, must be deposited into the oil and gas research fund. The state treasurer shall transfer into the oil and gas research fund two percent of the state's share of the oil and gas production tax and the oil extraction tax revenues ~~that have been deposited into the general fund for the previous three months. All money deposited in the oil and gas research fund is and interest on all such moneys are~~ appropriated as a continuing appropriation to the council to be used for purposes stated in chapter 54-17.6.

**SECTION 7. EMERGENCY.** Sections 1 through 5 of this Act are declared to be an emergency measure.

Approved April 10, 2007  
Filed April 11, 2007

**CHAPTER 465****SENATE BILL NO. 2061**

(Government and Veterans Affairs Committee)  
(At the request of the Superintendent of Public Instruction)

**LIBRARY STATISTICS COMPILATION**

AN ACT to amend and reenact subsection 7 of section 54-24-03 of the North Dakota Century Code, relating to duties of the state librarian to compile statistics on public libraries.

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

**SECTION 1. AMENDMENT.** Subsection 7 of section 54-24-03 of the North Dakota Century Code is amended and reenacted as follows:

7. Compile statistics on all North Dakota public libraries and their services and their larger counterparts of county and multicounty libraries, regional library cooperatives including multitype library authorities, and of the work done at the state library, and make a full biennial report to the superintendent of public instruction and the governor. The state librarian may not require a private sector library to submit information relating to the provisions of this subsection.

Approved March 5, 2007  
Filed March 6, 2007

**CHAPTER 466****HOUSE BILL NO. 1103**

(Political Subdivisions Committee)

(Representative S. Meyer)

(Senator Anderson)

(At the request of the State Library)

**LIBRARY LEVIES**

AN ACT to create and enact section 54-24.2-02.2 of the North Dakota Century Code, relating to public libraries' maintenance of local effort in order to receive state aid; to repeal section 54-24.2-04 of the North Dakota Century Code, relating to public libraries' maintenance of local effort in order to receive state aid; to provide for application; and to declare an emergency.

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

**SECTION 1.** Section 54-24.2-02.2 of the North Dakota Century Code is created and enacted as follows:

**54-24.2-02.2. Maintenance of local effort.**

1. A public library is not eligible to receive funds under this chapter during a fiscal year if the governing body has diminished, from the average of the three preceding fiscal years, the appropriation, in dollars, derived from the mill levy for public library services under section 40-38-02.
2. If the governing body is levying the maximum number of mills it can levy without having an election to increase the mill levy and the appropriation is diminished below the average of the three preceding fiscal years solely because of a reduction in the taxable valuation, then the public library is eligible to receive funds under this chapter.

**SECTION 2. REPEAL.** Section 54-24.2-04 of the North Dakota Century Code is repealed.

**SECTION 3. APPLICATION OF ACT.** This Act applies to distributions of funds for state aid to public libraries made after the effective date of this Act.

**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 7, 2007

Filed March 8, 2007

**CHAPTER 467****HOUSE BILL NO. 1309**

(Representatives Porter, R. Kelsch, S. Meyer)  
(Senator Cook)

**LIBRARY STATE AID REIMBURSEMENT**

AN ACT to create and enact a new section to chapter 54-24.2 of the North Dakota Century Code, relating to reimbursement for certain public libraries; and to provide an expiration date.

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

**SECTION 1.** A new section to chapter 54-24.2 of the North Dakota Century Code is created and enacted as follows:

**State aid to libraries - Reimbursement.**

1. The state library shall withhold from the amount of state aid to which a public library is entitled during the 2007-09 biennium any amount the public library received in excess of that to which it was entitled during the 2005-07 biennium, as a result of a statutory dispute regarding the meaning of a mill levy.
2. From the amounts withheld under subsection 1, the state library shall provide to each public library that received less than the amount to which it was entitled during the 2005-07 biennium, the difference between the amount the library received during the 2005-07 biennium and the amount that it would have received, but for the statutory dispute regarding the meaning of a mill levy.

**SECTION 2. EXPIRATION DATE.** This Act is effective through June 30, 2009, and after that date is ineffective.

Approved April 11, 2007  
Filed April 13, 2007

**CHAPTER 468****HOUSE BILL NO. 1028**

(Legislative Council)  
(Electric Industry Competition Committee)

**ENERGY DEVELOPMENT AND TRANSMISSION  
COMMITTEE**

AN ACT to amend and reenact section 54-35-18 of the North Dakota Century Code, relating to the energy development and transmission committee; and to provide an expiration date.

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

<sup>227</sup> **SECTION 1. AMENDMENT.** Section 54-35-18 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-18. (Effective through August 1, 2007 2011) Electric industry competition - Need for study Energy development and transmission committee.** ~~The legislative council shall study the impact of competition on the generation, transmission, and distribution of electric energy within this state. The legislative assembly finds that the economy of this state depends on the availability of reliable, low-cost electric energy. There is a national trend toward competition in the generation, transmission, and distribution of electric energy and the legislative assembly acknowledges that this competition has both potential benefits and adverse impacts on this state's electric suppliers as well as on their shareholders and customers and the citizens of this state. The legislative assembly determines that it is in the best interests of the citizens of this state to study the effects of competition on the generation, transmission, and distribution of electric energy. The legislative council, during each biennium, shall appoint an energy development and transmission committee in the same manner as the council appoints other interim committees. The council shall appoint six members of the house of representatives, four of whom must be from the majority political party and two of whom must be from the minority political party, and six members of the senate, four of whom must be from the majority political party and two of whom must be from the minority political party. The chairman of the legislative council shall designate the chairman of the committee. The committee shall operate according to the statutes and procedure governing the operation of other legislative council interim committees. The committee shall study development of each facet of the energy industry, from the obtaining of the raw natural resource to the sale of the final product in this state, other states, and other countries. The study may include the review of and recommendations relating to policy affecting extraction, generation, processing, transmission, transportation, marketing, distribution, and use of energy.~~

Approved March 7, 2007  
Filed March 8, 2007

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<sup>227</sup> Section 54-35-18 was also amended by section 4 of House Bill No. 1462, chapter 204.

**CHAPTER 469****HOUSE BILL NO. 1156**

(Representatives Keiser, N. Johnson, Porter)  
(Senators Klein, Stenehjem)

**WORKERS' COMPENSATION REVIEW COMMITTEE  
EXTENDED**

AN ACT to amend and reenact section 54-35-22 of the North Dakota Century Code, relating to the expiration of the workers' compensation review committee.

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

**SECTION 1. AMENDMENT.** Section 54-35-22 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-22. (Effective through July 31, 2007) Workers' compensation review committee.**

1. During each interim, a legislative council interim workers' compensation review committee must be appointed as follows: two members of the senate appointed by the majority leader of the senate of the legislative assembly; one member of the senate appointed by the minority leader of the senate of the legislative assembly; two members of the house of representatives appointed by the majority leader of the house of representatives; and one member of the house of representatives appointed by the minority leader of the house of representatives. The chairman of the legislative council shall designate the chairman of the committee. The committee shall operate according to the laws and procedures governing the operation of other legislative council interim committees. The committee may recommend legislation relating to workers' compensation. The committee shall meet once each calendar quarter or less often if the committee chairman determines a meeting that quarter is not necessary because there are no claims to review.
2. The committee shall review workers' compensation claims that are brought to the committee by injured workers for the purpose of determining whether changes should be made to the laws relating to workers' compensation. A claim may not be reviewed by the committee unless ~~the organization~~ workforce safety and insurance has issued a final determination and either the injured worker has exhausted the administrative and judicial appeals process or the period for appeal has expired. In order for the committee to review a claim, the injured worker must first sign a release of information for constituent authorization to allow the committee and legislative council staff to review the injured worker's workforce safety and insurance records and to allow the committee members and workforce safety and insurance representatives to discuss the records in an interim committee hearing. Notwithstanding any open meeting requirements, except as otherwise provided under this section, the workforce safety and insurance records of an injured worker whose case is reviewed by the committee are confidential. However, pursuant to the constituent's authorization,



information contained in the records may be discussed by the committee members and workforce safety and insurance representatives in an interim committee hearing.

3. The committee shall accept testimony of an injured worker and of a representative designated by the injured worker. After the committee has received the testimony of the injured worker and the injured worker's representative, the committee shall request that ~~the organization~~ workforce safety and insurance provide testimony.

Approved March 15, 2007  
Filed March 15, 2007

**CHAPTER 470****SENATE BILL NO. 2402**

(Senators Marcellais, Heckaman, Warner)  
(Representatives Boucher, Charging)

**TRIBAL AND STATE RELATIONS COMMITTEE  
EXTENDED**

AN ACT to amend and reenact section 54-35-23 of the North Dakota Century Code, relating to extension of the committee on tribal and state relations; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 54-35-23 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-23. (Effective through July 31, 2007 2009) Committee on tribal and state relations - Membership - Duties.**

1. The committee on tribal and state relations is composed of seven members as follows:
  - a. The chairman of the legislative council or the chairman's designee;
  - b. Three members of the house of representatives, two of whom must be selected by the leader representing the majority faction of the house of representatives and one of whom must be selected by the leader representing the minority faction of the house of representatives; and
  - c. Three members of the senate, two of whom must be selected by the leader representing the majority faction of the senate and one of whom must be selected by the leader representing the minority faction of the senate.
2. The chairman of the legislative council, or the chairman's designee, shall serve as chairman of the committee.
3. The committee shall meet at such times and places as determined by the chairman. The legislative council shall provide staffing for the committee.
4. The committee shall conduct joint meetings with the native American tribal citizens' task force to study tribal-state issues, including government-to-government relations, the delivery of services, case management services, child support enforcement, and issues related to the promotion of economic development. After the joint meetings have concluded, the committee shall meet to prepare a report on its findings and recommendations, together with any legislation required to implement those recommendations, to the legislative council.

5. The members of the committee are entitled to compensation from the legislative council for attendance at committee meetings at the rate provided for members of the legislative assembly for attendance at interim committee meetings and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.
6.
  - a. The native American tribal citizens' task force is composed of six members as follows:
    - a- (1) The executive director of the Indian affairs commission, or the executive director's designee;
    - b- (2) The chairman of the Standing Rock Sioux Tribe, or the chairman's designee;
    - c- (3) The chairman of the Spirit Lake Tribe, or the chairman's designee;
    - d- (4) The chairman of the Three Affiliated Tribes, or the chairman's designee;
    - e- (5) The chairman of the Turtle Mountain Band of Chippewa Indians, or the chairman's designee; and
    - f- (6) The chairman of the Sisseton-Wahpeton Sioux Tribe, or the chairman's designee.
  - b. If the executive director of the Indian affairs commission or any of the tribal chairmen appoint a designee to serve on the task force, only one individual may serve as that designee during the biennium. A substitute designee may be appointed by the executive director of the Indian affairs commission or a tribal chairman in the event of the death, incapacity, resignation, or refusal to serve of the initial designee.

Approved May 4, 2007  
Filed May 4, 2007

**CHAPTER 471****HOUSE BILL NO. 1213**

(Representative DeKrey)

**BANKRUPTCY EXEMPTIONS STUDY**

AN ACT to provide for a legislative council study of state bankruptcy exemptions.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY - BANKRUPTCY EXEMPTIONS.** The legislative council shall consider studying, during the 2007-08 interim, the current state exemptions for bankruptcy and the desirability of updating these exemptions. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Approved March 9, 2007

Filed March 12, 2007

**CHAPTER 472****HOUSE BILL NO. 1387**

(Representatives Bellew, Wieland)

**COURT FACILITIES LEASING STUDY**

AN ACT to provide for a legislative council study of the leasing of court facilities.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY OF LEASING OF COURT FACILITIES.** The legislative council shall consider studying, during the 2007-08 interim, the leasing or renting of facilities for the use by district courts from counties or other political subdivisions, including the feasibility and desirability of counties retaining a portion of the fees collected by the counties in lieu of leasing or renting by the state. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Approved March 5, 2007

Filed March 6, 2007

**CHAPTER 473****HOUSE BILL NO. 1456**

(Representatives Nelson, Gulleson, Kretschmar)  
(Senators Horne, Klein)

**WIND FARM SITING AND DECOMMISSIONING STUDY**

AN ACT to provide for a legislative council study of wind farm siting and decommissioning.

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

**SECTION 1. LEGISLATIVE COUNCIL - WIND FARM SITING AND DECOMMISSIONING STUDY.** During the 2007-08 interim, the legislative council shall study the siting and decommissioning of commercial wind farms. The study must include identification of key issues of public and industry concern; solicitation of public input from local government officials, electric utilities, the wind industry, landowners, farm organizations, and other concerned interests; review of the laws and policies of other jurisdictions; recommendations concerning laws or policies needed in this state to address wind farm siting and reclamation of wind farm sites; and the decommissioning of wind farm sites. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Approved April 12, 2007  
Filed April 13, 2007

**CHAPTER 474****HOUSE BILL NO. 1479**

(Representatives Koppelman, Boehning, S. Meyer, Thoreson)

(Senators Freborg, Klein)

**ADMINISTRATIVE AGENCIES PRACTICE ACT  
EXEMPTIONS STUDY**

AN ACT to provide for a legislative council study of agency exemptions from the Administrative Agencies Practice Act.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY - ADMINISTRATIVE AGENCIES PRACTICE ACT EXEMPTION.** The legislative council shall consider studying, during the 2007-08 interim, the appropriateness of each agency exemption from the Administrative Agencies Practice Act. The study should include discussion and analysis of each exemption, and a presentation by each agency entitled to an exemption, under the Administrative Agencies Practice Act. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Approved March 23, 2007

Filed March 23, 2007

**CHAPTER 475****SENATE BILL NO. 2139**

(Senators Flakoll, Taylor, Wanzek)  
(Representatives D. Johnson, Kingsbury, Mueller)

**AGRICULTURE LAWS STUDY**

AN ACT to require the legislative council to study laws relating to agriculture.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:****SECTION 1. LEGISLATIVE COUNCIL STUDY - AGRICULTURE LAWS.**

The legislative council shall study during the 2007-08 interim, the provisions of the North Dakota Century Code which relate to agriculture for the purpose of eliminating provisions that are irrelevant or duplicative, clarifying provisions that are inconsistent or unclear in their intent and direction, and rearranging provisions in a logical order. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Approved April 12, 2007

Filed April 13, 2007



**CHAPTER 476****HOUSE BILL NO. 1098**

(Government and Veterans Affairs Committee)  
(At the request of the Indian Affairs Commission)

**INDIAN AFFAIRS COMMISSION MEMBERSHIP**

AN ACT to amend and reenact section 54-36-01 of the North Dakota Century Code, relating to the membership of the Indian affairs commission.

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

**SECTION 1. AMENDMENT.** Section 54-36-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-36-01. Commission - Members - Officers - Expenses of members.**

The North Dakota Indian affairs commission consists of the governor, ~~four~~ three members appointed by the governor from the state at large, ~~three~~ two of whom must be of Indian descent, must be enrolled members of a tribe, and must be current voting residents of the state of North Dakota, and the ~~chairpersons of the Standing Rock, Fort Berthold, Fort Totten, and Turtle Mountain Indian Reservations or in the absence of the chairperson, the vice chairperson, or the chairperson's designee, of the Standing Rock Sioux Tribe; the Spirit Lake Tribe; the Three Affiliated Tribes of the Fort Berthold Reservation; the Turtle Mountain Band of Chippewa Indians; and the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation.~~ The governor is the chairperson of the commission. The commission shall meet quarterly or as otherwise agreed. Members of the commission or the ~~vice chairperson chairperson's designee~~ are entitled to receive mileage and expenses for attending each meeting as are allowed other state officers.

Approved March 5, 2007

Filed March 6, 2007

**CHAPTER 477****HOUSE BILL NO. 1031**

(Legislative Council)  
(Higher Education Committee)

**UNIVERSITY SYSTEM BLOCK GRANT  
APPROPRIATIONS**

AN ACT to amend and reenact sections 54-44.1-04 and 54-44.1-06 of the North Dakota Century Code, relating to budget requests and block grant appropriations for the North Dakota university system; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 54-44.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.1-04. (Effective through June 30, 2007 2009) Budget estimates of budget units filed with the office of the budget - Deadline.** The head of each budget unit, not later than July fifteenth of each year next preceding the session of the legislative assembly, shall submit to the office of the budget, estimates of financial requirements of the person's budget unit for the next two fiscal years, on the forms and in the manner prescribed by the office of the budget, with such explanatory data as is required by the office of the budget and such additional data as the head of the budget unit wishes to submit. The budget estimates for the North Dakota university system must include block grants for the university system for a base funding component and for an initiative funding component for specific strategies or initiatives and a budget estimate for an asset funding component for renewal and replacement of physical plant assets at the institutions of higher education. The estimates so submitted must bear the approval of the board or commission of each budget unit for which a board or commission is constituted. The director of the budget in the director's discretion may extend the filing date for any budget unit if the director finds there is some circumstance that makes it advantageous to authorize the extension. If a budget unit has not submitted its estimate of financial requirements by the required date or within a period of extension set by the director of the budget, the director of the budget shall prepare the budget unit's estimate of financial requirements except the estimate may not exceed ninety percent of the budget unit's previous biennial appropriation. The director of the budget or a subordinate officer as the director designates shall examine the estimates and shall afford to the heads of budget units reasonable opportunity for explanation in regard thereto and, when requested, shall grant to the heads of budget units a hearing thereon which must be open to the public.

**(Effective after June 30, 2007 2009) Budget estimates of budget units filed with the office of the budget - Deadline.** The head of each budget unit, not later than July fifteenth of each year next preceding the session of the legislative assembly, shall submit to the office of the budget, estimates of financial requirements of the person's budget unit for the next two fiscal years, on the forms and in the manner prescribed by the office of the budget, with such explanatory data as is required by the office of the budget and such additional data as the head of the budget unit wishes to submit. The estimates so submitted must bear the approval of

the board or commission of each budget unit for which a board or commission is constituted. The director of the budget may extend the filing date for any budget unit if the director finds there is some circumstance that makes it advantageous to authorize the extension. If a budget unit has not submitted its estimate of financial requirements by the required date or within a period of extension set by the director of the budget, the director of the budget shall prepare the budget unit's estimate of financial requirements except the estimate may not exceed ninety percent of the budget unit's previous biennial appropriation. The director of the budget or a subordinate officer as the director shall designate shall examine the estimates and shall afford to the heads of budget units reasonable opportunity for explanation in regard thereto and, when requested, shall grant to the heads of budget units a hearing thereon which must be open to the public.

**SECTION 2. AMENDMENT.** Section 54-44.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.1-06. (Effective through June 30, 2007 2009) Preparation of the budget data - Contents.** The director of the budget, through the office of the budget, shall prepare budget data which must contain and include the following:

1. Summary statements of the financial condition of the state, accompanied by the detailed schedules of assets and liabilities as the director of the budget determines desirable, which must include the following:
  - a. Summary statements of fund balances and assets showing in detail for each fund the surplus or deficit at the beginning of each of the two fiscal years of the previous biennium and the first fiscal year of the present biennium, the actual revenue for those years, the total appropriations for the previous and present biennium, and the total expenditures for those fiscal years; and
  - b. Similar summary statements of the estimated fund balances and assets for the current fiscal year and each of the fiscal years of the next biennium.

Summary statements may include a comparative consolidated balance sheet showing all the assets and liabilities of the state and the surplus or deficit, as the case may be, at the close of the first fiscal year of the current biennium.

2. Statements of actual revenue for the previous biennium, the first year of the present biennium, and the estimated revenue of the current fiscal year and of the next biennium, and a statement of unappropriated surplus expected to have accrued in the state treasury at the beginning of the next fiscal year. The statement of unappropriated surplus for the general fund must reflect any projected deficiency appropriations relating to expenditures from the general fund for the present biennium. The statements of revenue and estimated revenue must be classified by sources and by budget unit collecting them. Existing sources of revenue must be analyzed as to their equity, productivity, and need for revision, and any proposed new sources of revenue must be explained.
3. Summary statements of expenditures of the previous biennium and first year of the present biennium, itemized by budget units and classified as prescribed by the director of the budget.

4. Detailed comparative statements of expenditures and requests for appropriations by funds, budget units and classification of expenditures, showing the expenditures for the previous biennium, the first fiscal year of the present biennium, the budget of the current biennium, and the governor's recommendation for appropriations for each budget unit for the next biennium, all distributed according to the prescribed classification of expenditures. Following the lists of actual and proposed expenditures of each budget unit there must be a brief explanation of the functions of the unit and comments on its policies and plans and on any considerable differences among the amounts recommended, with any descriptive, quantitative, comparative, and other data as to work done, unit costs, and like information as may be considered necessary or desirable. For capital outlay expenditures involving construction projects to be completed in two or more fiscal years, there must be shown the total estimated cost of each such project and the amount thereof recommended to be appropriated and expended in each ensuing fiscal year until completion of the project. Capital outlay needs may be projected for at least two years beyond the period covered by the budget.
5. A detailed statement showing the estimate of all moneys required to be raised or appropriated for the payment of interest upon the funded debt of the state and its other obligations bearing interest, and the amount of money required to be contributed in the two next ensuing fiscal years to the general sinking funds maintained for the redemption and payment of the debts of the state.
6. A summary statement of the unappropriated fund balance estimated to be available at the beginning of the next biennium, and the estimated revenue of the next biennium, as compared with the total recommended amounts of appropriation for all classes of expenditures for the next biennium, and if the total of the recommended expenditures exceeds the total of the estimated resources, recommendations as to how the deficiency is to be met and estimates of any proposed additional revenue.
7. Drafts of proposed general and special appropriations acts embodying the budget data and recommendations of the governor for appropriations for the next biennium and drafts of such revenues and other acts recommended by the governor for putting into effect the proposed financial plan. The recommended general appropriation for each budget unit must be specified in a separate section of the general appropriations act. The draft of the proposed appropriations act for the North Dakota university system must include block grants for a base funding appropriation and for an initiative funding appropriation for specific strategies or initiatives and an appropriation for asset funding for renewal and replacement of physical plant assets at the institutions of higher education.
8. A list of every individual asset or service, excluding real estate, with a value of at least fifty thousand dollars and every group of assets and services comprising a single system with a combined value of at least fifty thousand dollars acquired through a capital or operating lease arrangement or debt financing arrangement by a state agency or institution. The list must include assets or services acquired in the

current biennium and anticipated assets or services to be acquired in the next biennium.

9. Any other information as the director of the budget determines desirable or as is required by law.

**(Effective after June 30, 2007 2009) Preparation of the budget data -**

**Contents.** The director of the budget, through the office of the budget, shall prepare budget data which must contain and include the following:

1. Summary statements of the financial condition of the state, accompanied by the detailed schedules of assets and liabilities as the director of the budget determines desirable, which must include the following:
  - a. Summary statements of fund balances and assets showing in detail for each fund the surplus or deficit at the beginning of each of the two fiscal years of the previous biennium and the first fiscal year of the present biennium, the actual revenue for those years, the total appropriations for the previous and present biennium, and the total expenditures for those fiscal years; and
  - b. Similar summary statements of the estimated fund balances and assets for the current fiscal year and each of the fiscal years of the next biennium.

Summary statements may include a comparative consolidated balance sheet showing all the assets and liabilities of the state and the surplus or deficit, as the case may be, at the close of the first fiscal year of the current biennium.

2. Statements of actual revenue for the previous biennium, the first year of the present biennium, and the estimated revenue of the current fiscal year and of the next biennium, and a statement of unappropriated surplus expected to have accrued in the state treasury at the beginning of the next fiscal year. The statement of unappropriated surplus for the general fund must reflect any projected deficiency appropriations relating to expenditures from the general fund for the present biennium. The statements of revenue and estimated revenue must be classified by sources and by budget unit collecting them. Existing sources of revenue must be analyzed as to their equity, productivity, and need for revision, and any proposed new sources of revenue must be explained.
3. Summary statements of expenditures of the previous biennium and first year of the present biennium, itemized by budget units and classified as prescribed by the director of the budget.
4. Detailed comparative statements of expenditures and requests for appropriations by funds, budget units and classification of expenditures, showing the expenditures for the previous biennium, the first fiscal year of the present biennium, the budget of the current biennium, and the governor's recommendation for appropriations for each budget unit for the next biennium, all distributed according to the prescribed classification of expenditures. Following the lists of actual and proposed expenditures of each budget unit there must be a brief explanation of the functions of the unit and comments on its policies and plans and on

any considerable differences among the amounts recommended, with any descriptive, quantitative, comparative, and other data as to work done, unit costs, and like information as may be considered necessary or desirable. For capital outlay expenditures involving construction projects to be completed in two or more fiscal years, there must be shown the total estimated cost of each such project and the amount thereof recommended to be appropriated and expended in each ensuing fiscal year until completion of the project. Capital outlay needs may be projected for at least two years beyond the period covered by the budget.

5. A detailed statement showing the estimate of all moneys required to be raised or appropriated for the payment of interest upon the funded debt of the state and its other obligations bearing interest, and the amount of money required to be contributed in the two next ensuing fiscal years to the general sinking funds maintained for the redemption and payment of the debts of the state.
6. A summary statement of the unappropriated fund balance estimated to be available at the beginning of the next biennium, and the estimated revenue of the next biennium, as compared with the total recommended amounts of appropriation for all classes of expenditures for the next biennium, and if the total of the recommended expenditures exceeds the total of the estimated resources, recommendations as to how the deficiency is to be met and estimates of any proposed additional revenue.
7. Drafts of a proposed general appropriations act and special appropriations acts embodying the budget data and recommendations of the governor for appropriations for the next biennium and drafts of such revenues and other acts recommended by the governor for putting into effect the proposed financial plan. The recommended general appropriation for each budget unit must be specified in a separate section of the general appropriations act.
8. A list of every individual asset or service, excluding real estate, with a value of at least fifty thousand dollars and every group of assets and services comprising a single system with a combined value of at least fifty thousand dollars acquired through a capital or operating lease arrangement or debt financing arrangement by a state agency or institution. The list must include assets or services acquired in the current biennium and anticipated assets or services to be acquired in the next biennium.
9. Any other information as the director of the budget determines desirable or as is required by law.

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

Approved March 7, 2007

Filed March 8, 2007

**CHAPTER 478****HOUSE BILL NO. 1032**

(Legislative Council)  
(Higher Education Committee)

**UNIVERSITY SYSTEM UNEXPENDED  
APPROPRIATION CANCELLATION**

AN ACT to amend and reenact section 54-44.1-11 of the North Dakota Century Code, relating to the cancellation of unexpended appropriations for the North Dakota university system; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 54-44.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.1-11. (Effective through June 30, ~~2007~~ 2009) Office of management and budget to cancel unexpended appropriations - When they may continue.** Except as otherwise provided by law, the office of management and budget, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations after the expiration of the biennial period during which they became available under the law. Unexpended appropriations for the state historical society are not subject to this section and the state historical society shall report on the amounts and uses of funds carried over from one biennium to the appropriations committees of the next subsequent legislative assembly. Unexpended appropriations for the North Dakota university system are not subject to this section and the North Dakota university system shall report on the amounts and uses of funds carried over from one biennium to the next to subsequent appropriations committees of the legislative assembly. The chairmen of the appropriations committees of the senate and house of representatives of the legislative assembly with the office of the budget may continue appropriations or balances in force for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the director of the budget for:

1. New construction projects.
2. Major repair or improvement projects.
3. Purchases of new equipment costing more than ten thousand dollars per unit if it was ordered during the first twelve months of the biennium in which the funds were appropriated.
4. The purchase of land by the state on a "contract for deed" purchase if the total purchase price is within the authorized appropriation.
5. Purchases by the department of transportation of roadway maintenance equipment costing more than ten thousand dollars per unit if the equipment was ordered during the first twenty-one months of the biennium in which the funds were appropriated.

6. Authorized ongoing information technology projects.

**(Effective after June 30, 2007 2009) Office of management and budget to cancel unexpended appropriations - When they may continue.** The office of management and budget, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations after the expiration of the biennial period during which they became available under the law. Unexpended appropriations for the state historical society are not subject to this section and the state historical society shall report on the amounts and uses of funds carried over from one biennium to the appropriations committees of the next subsequent legislative assembly. The chairmen of the appropriations committees of the senate and house of representatives of the legislative assembly with the office of the budget may continue appropriations or balances in force for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the director of the budget for:

1. New construction projects.
2. Major repair or improvement projects.
3. Purchases of new equipment costing more than ten thousand dollars per unit if it was ordered during the first twelve months of the biennium in which the funds were appropriated.
4. The purchase of land by the state on a "contract for deed" purchase if the total purchase price is within the authorized appropriation.
5. Purchases by the department of transportation of roadway maintenance equipment costing more than ten thousand dollars per unit if the equipment was ordered during the first twenty-one months of the biennium in which the funds were appropriated.
6. Authorized ongoing information technology projects.

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

Approved March 7, 2007

Filed March 8, 2007



**CHAPTER 479****SENATE BILL NO. 2321**

(Senators Mathern, Hacker, J. Lee)  
(Representatives Wieland, N. Johnson, Conrad)

**MERIT SYSTEM EXEMPTIONS**

AN ACT to create and enact two new sections to chapter 54-44.3 of the North Dakota Century Code, relating to authorizing political subdivisions to request an exemption from coverage under the state merit system.

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

**SECTION 1.** Two new sections to chapter 54-44.3 of the North Dakota Century Code are created and enacted as follows:

**Political subdivision may request to be exempted from state merit system.** A political subdivision subject to the merit system under this chapter may file a request with the division and the director of the department of human services to be exempted from the merit system. The request must describe a plan and policy that assures the political subdivision has developed a merit system plan that meets federal standards for personnel administration. The division and the director of the department of human services shall authorize the political subdivision plan within sixty days of receiving a request under this section if the plan and policies meet federal requirements. If the division and the director of the department of human services determine that the proposed plan and policies fail to meet the federal requirements, the division and the director shall deny the request and notify the requester of the specific reasons for the denial.

**Political subdivision merit system compliance.** The division and the department of human services shall develop oversight and audit procedures for political subdivision merit systems to assure compliance with federal merit system principles. If the division and the department of human services determine that a political subdivision has failed to maintain compliance with federal merit system principles, the division and the department shall notify the political subdivision of the noncompliance and order the political subdivision to take corrective action. If a political subdivision does not take the necessary corrective action to comply with federal merit system principles, the division and the department of human services shall revoke the political subdivision's exemption from the state merit system and return the political subdivision to the state merit system. The political subdivision is responsible for any penalty assessed by a federal authority for a noncompliant political subdivision merit system.

Approved April 5, 2007

Filed April 5, 2007

**CHAPTER 480****HOUSE BILL NO. 1102**

(Government and Veterans Affairs Committee)  
(At the request of the Adjutant General)

**ARCHITECT AND ENGINEER FEES**

AN ACT to amend and reenact section 54-44.7-04 of the North Dakota Century Code, relating to fees authorized by state agencies for architect, engineer, construction management, or land surveying services.

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

**SECTION 1. AMENDMENT.** Section 54-44.7-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.7-04. Exception.**

1. All state agencies securing architect, engineer, construction management, or land surveying services for projects for which the fees are estimated not to exceed ~~ten~~ twenty-five thousand dollars may employ the architects, engineers, construction managers, 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, construction management, or land surveying services to the project.
  - c. The capability of the architect, engineer, construction manager, 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 may not exceed ~~twenty~~ fifty 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.

Approved March 13, 2007  
Filed March 14, 2007

**CHAPTER 481****HOUSE BILL NO. 1483**

(Representatives Gulleson, Ekstrom, Mueller, Hawken)  
(Senators Erbele, Tallackson)

**ENVIRONMENTALLY PREFERABLE PRODUCT  
PROCUREMENT**

AN ACT to amend and reenact section 54-44.4-07 of the North Dakota Century Code, relating to procurement of environmentally preferable products; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 54-44.4-07 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.4-07. ~~Specification for paper products and inks~~ Procurement of environmentally preferable products.**

1. The office of management and budget, the institutions of higher education, and any other state agency or institution that has authority to purchase products; are encouraged, ~~whenever possible when to~~ purchase environmentally preferable products.
  - a. Where practicable, specifications for purchasing newsprint printing services; ~~to~~ should specify the use of soybean-based ink. The North Dakota soybean council and the agriculture commissioner shall assist the office of management and budget in locating suppliers of soybean-based inks and in collecting data on the purchase of soybean-based inks.
  - b. In requesting bids for paper products, the office of management and budget must request information on the recycled content of such products.
  - c. Where practicable, biobased products should be specified.
2. The office of management and budget, in coordination with the state board of higher education, shall develop guidelines for a biobased procurement program.

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective on July 1, 2008.

Approved April 9, 2007  
Filed April 10, 2007

**CHAPTER 482****SENATE BILL NO. 2048**

(Government and Veterans Affairs Committee)

(At the request of the Public Employees Retirement System Board)

**PERS ADMINISTRATION**

AN ACT to create and enact a new subsection to section 39-03.1-28 and a new subsection to section 54-52-26 of the North Dakota Century Code, relating to confidentiality of retirement records; and to amend and reenact subsections 7 and 8 of section 39-03.1-08.2, subsections 2 and 5 of section 39-03.1-11, sections 39-03.1-11.2, 39-03.1-30, and 54-52-02.9, subsections 2 and 5 of section 54-52-17, subsections 1, 4, 5, and 6 of section 54-52-17.4, sections 54-52-27, 54-52-28, 54-52-29, 54-52.6-09.2, and 54-52.6-10, and subsection 4 of section 54-52.6-13 of the North Dakota Century Code, relating to terms, final average salary calculations, payment of delayed retirement benefits, conversion of sick leave, temporary employee purchase of service credit, compliance with the Internal Revenue Code, employer service credit purchase, automatic refund of account balances, and vesting under the highway patrolmen's retirement and public employees retirement systems.

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

**SECTION 1. AMENDMENT.** Subsections 7 and 8 of section 39-03.1-08.2 of the North Dakota Century Code are amended and reenacted as follows:

7. In addition to service credit identified in this section, a ~~member~~ contributor may purchase up to five years of service credit.
8. Pursuant to rules adopted by the board, the board may allow a ~~member~~ contributor to purchase service credit with either pretax or aftertax moneys, at the board's discretion. If a ~~member~~ contributor elects to purchase service credit using pretax moneys, the requirements and restrictions in subsection 2 of section 39-03.1-09 apply to the purchase arrangement.

**SECTION 2. AMENDMENT.** Subsections 2 and 5 of section 39-03.1-11 of the North Dakota Century Code are amended and reenacted as follows:

2. Retirement benefits are based on the contributor's final average salary. Final average salary is the average of the highest salary received by the contributor for any thirty-six months employed during the last one hundred twenty months of employment. For contributors who ~~retire~~ terminate employment on or after July 4, 2009 August 1, 2010, final average salary is the average of the highest salary received by the contributor for any thirty-six months employed during the last one hundred eighty months of employment. For contributors who terminate employment between July 31, 2005, and August 1, 2010, final average salary is the average of the highest salary received by the member for any thirty-six months employed during the period for which the board has appropriate and accurate salary records on its electronic data base, but that period may not be more than the last one hundred eighty

months of employment. Months not employed or months in which employment was not as a permanent employee are excluded in arriving at the thirty-six months to be used for the purpose of computing an average. If the contributor has worked for less than thirty-six months at the postponed retirement date, the final average salary is the average salary for all months of employment.

5. On termination of employment after completing ten years of eligible employment but before the normal retirement date, a contributor who does not elect to receive early retirement benefits is eligible to receive deferred vested retirement benefits. The deferred benefits are payable beginning on the contributor's normal retirement date ~~and are one hundred percent of the contributor's normal retirement benefits in one of the forms provided in this section.~~ Contributors who have delayed or inadvertently failed to apply for retirement benefits to commence on their normal retirement date may choose to receive either a lump sum payment equal to the amount of missed payments, or an actuarial increase to the form of benefit the member has selected, which increase must reflect the missed payments. The final average salary used for calculating deferred vested retirement benefits must be increased annually, from the later of the date of termination of employment or July 1, 1991, until the date the contributor begins to receive retirement benefits from the fund, at a rate as determined by the board not to exceed a rate that would be approximately equal to annual salary increases provided state employees pursuant to action by the legislative assembly.

**SECTION 3. AMENDMENT.** Section 39-03.1-11.2 of the North Dakota Century Code is amended and reenacted as follows:

**39-03.1-11.2. Internal Revenue Code compliance.** The board shall administer the plan in compliance with section 415, section 401(a)(9), section 401(a)(17), and section 401(a)(31) of the Internal Revenue Code in effect on August 1, ~~2005~~ 2007, as it applies for governmental plans.

**SECTION 4.** A new subsection to section 39-03.1-28 of the North Dakota Century Code is created and enacted as follows:

A person if the information relates to an employer service purchase under section 39-03.1-10.2, but the information must be limited to the member's name and employer, the retirement program in which the member participates, the amount of service credit purchased by the employer, and the total amount expended by the employer for that service credit purchase, and that information may only be obtained from the member's employer.

**SECTION 5. AMENDMENT.** Section 39-03.1-30 of the North Dakota Century Code is amended and reenacted as follows:

**39-03.1-30. Conversion of sick leave.** ~~At termination of eligible employment a~~ A member is entitled to credit in the retirement system for each month of unused sick leave, as certified by the employer, if the member or the member's employer pays an amount equal to the member's final average salary, times the number of months of sick leave converted, times the employer and employee contribution, plus the required contribution for the retiree health benefits program. Hours of sick leave equal to a fraction of a month are deemed to be a full month for

purposes of conversion to service credit. A member may convert all of the member's certified sick leave or a part of that person's certified sick leave. ~~All conversion payments must be made within sixty days of termination and before the member receives a retirement annuity unless the member has submitted an approved payment plan to the board.~~

**SECTION 6. AMENDMENT.** Section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-02.9. Participation by temporary employees.** A temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the public employees retirement system and receive credit for service after enrollment. The temporary employee shall pay monthly to the fund an amount equal to eight and twelve-hundredths percent times the temporary employee's present monthly salary. The temporary employee shall also pay monthly to the retiree health benefit fund established under section 54-52.1-03.2 one percent times the temporary employee's present monthly salary. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee in the public employees retirement system until termination of employment or reclassification of the temporary employee as a permanent employee. A temporary employee may not purchase any additional credit, including additional credit under section 54-52-17.4 or past service under section 54-52-02.6.

**SECTION 7. AMENDMENT.** Subsections 2 and 5 of section 54-52-17 of the North Dakota Century Code are amended and reenacted as follows:

2. Retirement benefits are calculated from the participating member's final average salary, which is the average of the highest salary received by the member for any thirty-six months employed during the last one hundred twenty months of employment. For members who ~~retire~~ terminate employment on or after July 4, 2009 August 1, 2010, final average salary is the average of the highest salary received by the member for any thirty-six months employed during the last one hundred eighty months of employment. For members who terminate employment between July 31, 2005, and August 1, 2010, final average salary is the average of the highest salary received by the member for any thirty-six months employed during the period for which the board has appropriate and accurate salary records on its electronic data base, but that period may not be more than the last one hundred eighty months of employment. Months not employed are excluded in arriving at the thirty-six months to be used for the purpose of computing an average. If the participating member has worked for less than thirty-six months at the normal retirement date, the final average salary is the average salary for the total months of employment.
5. Upon termination of employment after completing three years of eligible employment, except for supreme and district court judges, who must complete five years of eligible employment, but before normal retirement date, a member who does not elect to receive early retirement benefits is eligible to receive deferred vested retirement benefits payable commencing on the member's normal retirement date ~~equal to one hundred percent of the member's accrued single life benefits in one of the optional forms provided in subsection 9.~~ Members who have delayed or inadvertently failed to apply for retirement benefits to

commence on their normal retirement date may choose to receive either a lump sum payment equal to the amount of missed payments, or an actuarial increase to the form of benefit the member has selected, which increase must reflect the missed payments.

**SECTION 8. AMENDMENT.** Subsections 1, 4, 5, and 6 of section 54-52-17.4 of the North Dakota Century Code are amended and reenacted as follows:

1. A participating member may elect to purchase credit for years of service and prior service for which the participating member is not presently receiving credit. A participating member is entitled to purchase additional credit under this section for the following service or prior service, except this service is not eligible for credit if the years claimed also qualify for retirement benefits from another retirement system:
  - a. Active prior employment in the armed forces of the United States, except as provided in section 54-52-17.14, for up to four years of credit.
  - b. Employment as a permanent employee by a public employer either within or outside the state of North Dakota.
  - c. Employment as a permanent employee by a political subdivision participating in the public employees retirement system which did not pay the cost of past service benefits under section 54-52-02.1.
  - d. Service the participating member did not elect to repurchase upon reemployment under section 54-52-02.6.
  - e. Service of an eligible employee, who exercised the privilege to withdraw from the predecessor plan to the public employees retirement system under subsection 10 of section 54-52-17 as created by section 13 of chapter 499 of the 1977 Session Laws.
  - f. Employment as a permanent employee by the federal government.
4. The participating member may purchase credit under this section, or the participating member's employer may purchase for the participating member, by paying to the board an amount equal to the actuarial cost to the fund of providing the credit. If the participating member purchases credit pursuant to subdivision d of subsection 1, the participating member must pay to the board an amount equal to the greater of the actuarial cost to the fund of providing the credit, or the amount the participating member received upon taking a refund of the participating member's account balance, plus interest at the actuarial rate of return from the time the participating member was issued the refund. If the participating member is not repurchasing all of the credit originally refunded, the participating member must pay a pro rata amount of the refunded amount determined by dividing the refunded amount by the number of months of credit refunded, multiplying that amount times the number of months of credit the participating member seeks to repurchase, and adding interest at the actuarial rate of return. The participating member or the participating member's employer shall also pay to the retiree health benefits fund established under section 54-52.1-03.2 an amount equal to the actuarial cost to that fund for the

additional credit. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. The board shall adopt rules governing the purchase of additional credit under this section.

5. Pursuant to rules adopted by the board, the board may allow a participating member to purchase service credit with either pretax or aftertax moneys, at the board's discretion. If the participating member elects to purchase service credit using pretax moneys, the requirements and restrictions in subsection 3 of section 54-52-05 apply to the purchase arrangement.
6. In addition to service credit identified in this section, a vested participating member may purchase up to five years of service credit unrelated to any other eligible service.

**SECTION 9.** A new subsection to section 54-52-26 of the North Dakota Century Code is created and enacted as follows:

A person if the information relates to an employer service purchase, but the information must be limited to the member's name and employer, the retirement program in which the member participates, the amount of service credit purchased by the employer, and the total amount expended by the employer for that service credit purchase, and that information may only be obtained from the member's employer.

**SECTION 10. AMENDMENT.** Section 54-52-27 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-27. Purchase of sick leave credit.** ~~At termination of eligible employment a~~ A member is entitled to credit in the retirement system for each month of unused sick leave, as certified by the member's employer, if the member or the member's employer pays an amount equal to the member's final average salary, times the number of months of sick leave converted, times the percent of employer and employee contributions to the retirement program of the member, plus one percent for the retiree health benefits program. Hours of sick leave equal to a fraction of a month are deemed to be a full month for purposes of conversion to service credit. A member may convert all of the member's certified sick leave or a part of the member's certified sick leave. ~~All conversion payments must be made within sixty days of termination of employment and before the member receives a retirement annuity unless the member has submitted an approved payment plan to the board.~~

**SECTION 11. AMENDMENT.** Section 54-52-28 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-28. Internal Revenue Code compliance.** The board shall administer the plan in compliance with section 415, section 401(a)(9), section 401(a)(17), and section 401(a)(31) of the Internal Revenue Code in effect on August 1, ~~2005~~ 2007, as it applies for governmental plans.

**SECTION 12. AMENDMENT.** Section 54-52-29 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-29. Employer service purchases.** A participating employer may purchase additional service credit on behalf of a member under the following conditions:



1. The member may not be given the option to choose between an employer service purchase and an equivalent amount paid in cash.
2. The member must meet one of the following conditions at the time the purchase is made:
  - a. The member's age plus service credit must be equal to or greater than seventy-five; or
  - b. The member's age must be at least fifty-five and the member must have at least three years of service credit.
3. The board must determine the purchase price on an actuarially equivalent basis, taking into account the contributions necessary for both the retirement program and the retiree health benefits fund.
4. The purchase must be completed before the member's retirement.
5. The employer may purchase a maximum of five years of service credit on behalf of the member.
6. The employer must pay the purchase price for the service credit purchased under this section in a lump sum.

**SECTION 13. AMENDMENT.** Section 54-52.6-09.2 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.6-09.2. Additional employer contributions.** Additional lump sum contributions by an employer to a participating member's defined contribution retirement plan account may be made if the participating member has ~~twenty-five years of service, has~~ not retired, and has not received a retirement benefit under this chapter. Contributions may be made in an amount actuarially equivalent to the amounts determined pursuant to chapter 54-52 as follows:

1. For the conversion of sick leave pursuant to section 54-52-27 if the participating member has four or more years of service.
2. The equivalent of up to five years of service credit unrelated to any other eligible service as provided in subsection 5 of section 54-52-29 if the participating member has twenty-five or more years of service.

**SECTION 14. AMENDMENT.** Section 54-52.6-10 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.6-10. Vesting.** A participating member is immediately one hundred percent vested in that member's contributions made to that member's account under this chapter. A participating member vests in the employer contributions made on that member's behalf to an account under this chapter according to the following schedule:

1. Upon completion of two years of service, fifty percent.
2. Upon completion of three years of service, seventy-five percent.
3. Upon completion of four years of service, one hundred percent.

A participating member also becomes one hundred percent vested in the employer contributions upon reaching age sixty-five. A participating member who was a member or deferred member of the public employees retirement system under chapter 54-52 who makes an election to participate in the defined contribution retirement plan pursuant to this chapter, must be credited with the years of service accrued under the public employees retirement system on the effective date of participation in the defined contribution retirement plan for the purpose of meeting vesting requirements for benefits under this section. Any forfeiture as a result of the failure of a participating member to vest in the employer contribution must be deposited in the administrative expenses account.

**SECTION 15. AMENDMENT.** Subsection 4 of section 54-52.6-13 of the North Dakota Century Code is amended and reenacted as follows:

4. If the former participating member's vested account balance is less than ~~five~~ one thousand dollars, the board shall automatically refund the member's vested account balance upon termination of employment. The member may waive the refund if the member submits a written statement to the board, within one hundred twenty days after termination, requesting that the member's vested account balance remain in the plan.

Approved March 16, 2007  
Filed March 16, 2007

**CHAPTER 483****HOUSE BILL NO. 1078**

(Government and Veterans Affairs Committee)

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

**BOARD FOR CAREER AND TECHNICAL EDUCATION  
PERS PARTICIPATION**

AN ACT to create and enact a new section to chapter 54-52 of the North Dakota Century Code, relating to participation by employees of the state board for career and technical education in the public employees retirement system; to amend and reenact section 15-39.1-09, subsection 4 of section 54-52-01, and subsection 1 of section 54-52.1-03.2 of the North Dakota Century Code, relating to participation by employees of the state board for career and technical education in the public employees retirement system; and to provide an appropriation.

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

<sup>228</sup> **SECTION 1. AMENDMENT.** Section 15-39.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-09. Membership in fund and assessments - Employer payment of employee contribution.**

1. Except as provided in subsection 2 of section 15-39.1-10.3 and ~~subsection subsections 3 and 4~~, every teacher is a member of the fund and must be assessed upon the teacher's salary seven and seventy-five hundredths percent per annum, which must be deducted, certified, and paid monthly to the fund by the disbursing official of the governmental body by which the teacher is employed. Every governmental body employing a teacher shall pay to the fund seven and seventy-five hundredths percent per annum of the salary of each teacher employed by it. The disbursing official of the governmental body shall certify the governmental body payments and remit the payments monthly to the fund.
2. Each employer, at its option, may pay the teacher contributions required by subsection 1 for all compensation earned after June 30, 1983. The amount paid must be paid by the employer in lieu of contributions by the employee. If an employer decides not to pay the contributions, the amount that would have been paid will continue to be deducted from compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining income tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the employer, they may not be included as gross income of the teacher in determining tax treatment under this code and the Internal

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<sup>228</sup> Section 15-39.1-09 was also amended by section 3 of Senate Bill No. 2046, chapter 157.

Revenue Code until they are distributed or made available. The employer shall pay these teacher contributions from the same source of funds used in paying compensation to the teachers. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases. If teacher contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as teacher contributions made prior to the date the contributions were assumed by the employer. The option given employers by this subsection must be exercised in accordance with rules adopted by the board.

3. A person, except the superintendent of public instruction, who is certified to teach in this state by the education standards and practices board and who is first employed and entered upon the payroll of the superintendent of public instruction after January 6, 2001, may elect to become a participating member of the public employees retirement system. An election made by a person to participate in the public employees retirement system under this subsection is irrevocable. Nonteaching employees of the superintendent of public instruction, including the superintendent of public instruction, may elect to transfer to the public employees retirement system pursuant to section 54-52-02.13. Employees of the state board for career and technical education may elect to transfer to the public employees retirement system pursuant to section 3 of this Act.
4. An individual who is first employed and entered upon the payroll of the state board for career and technical education after the effective date of this Act may elect to become a participating member of the public employees retirement system. An election made by an individual to participate in the public employees retirement system under this subsection is irrevocable.

**SECTION 2. AMENDMENT.** Subsection 4 of section 54-52-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Eligible employee" means all permanent employees who meet all of the eligibility requirements set by this chapter and who are eighteen years or more of age, and includes appointive and elective officials under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12, and nonteaching employees of the superintendent of public instruction, including the superintendent of public instruction, who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.13, and employees of the state board for career and technical education who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 3 of this Act. Eligible employee does not include nonclassified state employees who elect to become members of the retirement plan established under chapter 54-52.6 but does include employees of the judicial branch and employees of the board of higher education and state institutions under the jurisdiction of the board.

**SECTION 3.** A new section to chapter 54-52 of the North Dakota Century Code is created and enacted as follows:

**Participation by employees of the state board for career and technical education.** Notwithstanding any other provision of law, between the effective date of this Act and five p.m. on August 31, 2007, an employee of the state board for career and technical education who is otherwise eligible to participate in the public employees retirement system may file an election with the staff of the retirement and investment office to transfer from the teachers' fund for retirement to the public employees retirement system. The teachers' fund for retirement shall certify the employees who are eligible to transfer. An election to transfer is irrevocable for as long as the employee remains employed with the state board for career and technical education. The teachers' fund for retirement shall certify a transferring employee's salary, service credit, contribution history, account balance, and any other necessary information to the public employees retirement system. The amount to be transferred is the greater of the actuarial present value of the employee's accrued benefit as of July 1, 2007, plus interest at the rate of seven and one-half percent from July 1, 2007, until the date the amount is transferred to the public employees retirement system or the employee's account balance on the date of transfer. The public employees retirement system shall credit the transferring employee with the service credit specified by the teachers' fund for retirement and shall convert the annual salary history from the teachers' fund for retirement to a monthly salary for the period. An employee becomes a member of the public employees retirement system as of the date the funds are transferred. To be eligible to transfer, an employee must be employed by the state board for career and technical education on the date of the transfer. The state board for career and technical education shall begin making retirement contributions, and the public employees retirement system shall begin receiving those retirement contributions, on behalf of employees who have elected to transfer to the public employees retirement system to that system the first of the month following the date of transfer.

**SECTION 4. AMENDMENT.** Subsection 1 of section 54-52.1-03.2 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall establish a retiree health benefits fund account with the Bank of North Dakota for the purpose of prefunding and providing hospital benefits coverage and medical benefits coverage under the uniform group insurance program for retired eligible employees or surviving spouses of retired eligible employees and their dependents as provided in this chapter. The state shall contribute monthly to the retiree health benefits fund an amount equal to one percent of the monthly salaries and wages of all participating members of the highway patrolmen's retirement system under chapter 39-03.1, and one percent of the monthly salaries of all supreme or district court judges who are participating members of the public employees retirement system under chapter 54-52. Each governmental unit that contributes to the public employees retirement system fund under section 54-52-06 or the retirement plan under chapter 54-52.6 shall contribute monthly to the retiree health benefits fund an amount equal to one percent of the monthly salaries or wages of all participating members of the public employees retirement system under chapter 54-52 or chapter 54-52.6, except for nonteaching employees of the superintendent of public instruction who elect to participate in the public employees retirement system pursuant to section 54-52-02.13 and employees of the state board for career and technical education who elect to participate in the public employees retirement system pursuant to section 3 of this Act. For nonteaching employees of the superintendent of public instruction who elect to participate in the public employees retirement system pursuant to section 54-52-02.13, the superintendent of public instruction

shall contribute monthly to the retiree health benefits fund an amount equal to three and one-tenth percent of the monthly salaries or wages of those nonteaching employee members, beginning on the first of the month following the transfer under section 54-52-02.13 and continuing thereafter for a period of eight years, after which time the superintendent of public instruction shall contribute one percent of the monthly salary or wages of those nonteaching employee members. For employees of the state board for career and technical education who elect to participate in the public employees retirement system pursuant to section 3 of this Act, the state board for career and technical education shall contribute monthly to the retiree health benefits fund an amount equal the two and eighty-five hundredths percent of the monthly salary or wages of those employee members, beginning on the first of the month following the transfer under section 3 of this Act and continuing thereafter for a period of eight years, after which time the state board for career and technical education shall contribute one percent of the monthly salary or wages of those employee members. The employer of a national guard security officer or firefighter shall contribute monthly to the retiree health benefits fund an amount equal to one percent of the monthly salaries or wages of all national guard security officers or firefighters participating in the public employees retirement system under chapter 54-52. Job service North Dakota shall reimburse monthly the retiree health benefits fund for credit received under section 54-52.1-03.3 by members of the retirement program established by job service North Dakota under section 52-11-01. The board, as trustee of the fund and in exclusive control of its administration, shall:

- a. Provide for the investment and disbursement of moneys of the retiree health benefits fund and administrative expenditures in the same manner as moneys of the public employees retirement system are invested, disbursed, or expended.
- b. Adopt rules necessary for the proper administration of the retiree health benefits fund, including enrollment procedures.

**SECTION 5. APPROPRIATION.** There is appropriated out of any moneys in the public employees retirement fund, not otherwise appropriated, the sum of \$3,000, or so much of the sum as may be necessary, to the public employees retirement system for the purpose of implementing this Act, for the biennium beginning July 1, 2007, and ending June 30, 2009.

Approved March 23, 2007  
Filed March 23, 2007

**CHAPTER 484****SENATE BILL NO. 2044**

(Government and Veterans Affairs Committee)

(At the request of the Public Employees Retirement System Board)

**PERS SUPPLEMENTAL RETIREE BENEFIT PAYMENTS**

AN ACT to amend and reenact sections 39-03.1-11.3, 54-52-17.11, and 54-52-17.13 of the North Dakota Century Code, relating to supplemental retiree benefit payments under the public employees retirement system.

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

**SECTION 1. AMENDMENT.** Section 39-03.1-11.3 of the North Dakota Century Code is amended and reenacted as follows:

**39-03.1-11.3. Supplemental retiree benefit payment.** If the board determines that the fund has obtained a total return on investments of ~~eleven and two tenths~~ nine and six hundredths percent or higher for the fiscal year ending June 30, ~~2005~~ 2007, or June 30, ~~2006~~ 2008, ~~and that the fund has the necessary margin to pay for the benefit,~~ the board shall authorize a payment to each retiree receiving benefit payments under this chapter as of the date of the fiscal yearend in the amount of fifty percent of the retiree's then current monthly benefit payment. ~~The payment must be made the January following the fiscal yearend an additional payment equal to seventy-five percent of the January retirement allowance following the fiscal yearend to each eligible retiree in pay status as of that January, including joint and survivor and term certain beneficiaries, under this chapter.~~ The board may only make one payment under this section.

**SECTION 2. AMENDMENT.** Section 54-52-17.11 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-17.11. Judges postretirement adjustments.** A supreme or district court judge or that person's beneficiary who, on December 31, ~~2004~~ 2007, is receiving retirement benefits under subdivision b of subsection 4 of section 54-52-17, is entitled to receive an increase in benefits equal to two percent of the individual's present benefits with the increase payable beginning January 1, ~~2002~~ 2008. A supreme or district court judge or that person's beneficiary who, on December 31, ~~2002~~ 2008, is receiving retirement benefits under subdivision b of subsection 4 of section 54-52-17, is entitled to receive an increase in benefits equal to two percent of the individual's present benefits with the increase payable beginning January 1, ~~2003~~ 2009. The increases allowed by this section may only be given if the public employees retirement board determines there is actuarial margin sufficient to pay the increases.

**SECTION 3. AMENDMENT.** Section 54-52-17.13 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-17.13. Supplemental retiree benefit payment.** If the board determines that the fund has obtained a total return on investments of ~~eleven and two tenths~~ nine and six hundredths percent or higher for the fiscal year ending June 30, ~~2005~~ 2007, or June 30, ~~2006~~ 2008, and that the fund has the necessary margin to pay for the benefit, the board shall authorize a payment to each retiree receiving benefit payments under this chapter as of the date of the fiscal yearend in the amount of fifty percent of the retiree's then current monthly benefit payment. The payment must be made the January following the fiscal yearend an additional payment equal to seventy-five percent of the January retirement allowance following the fiscal yearend to each eligible retiree in pay status as of that January, excluding judicial retirees and beneficiaries, but including joint and survivor and term certain beneficiaries, under this chapter. The board may only make one payment to each retiree under this section.

Approved March 13, 2007  
Filed March 14, 2007



**CHAPTER 485****HOUSE BILL NO. 1179**

(Representatives Price, N. Johnson, Porter)

(Senators Fischer, J. Lee, Lyson)

**UNIFORM GROUP INSURANCE PARTICIPATION**

AN ACT to amend and reenact subsection 1 of section 23-35-04 and section 54-52.1-03.1 of the North Dakota Century Code, relating to the formation of health districts and to participation in the uniform group insurance program.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 23-35-04 of the North Dakota Century Code is amended and reenacted as follows:

1. Upon the adoption of a resolution, the governing body may form a single county, multicounty, or a city-county health district.

**SECTION 2. AMENDMENT.** Section 54-52.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-03.1. Certain political subdivisions authorized to join uniform group insurance program - Employer contribution.** A political subdivision may extend the benefits of the uniform group insurance program under this chapter to its permanent employees, subject to minimum requirements established by the board and a minimum period of participation of sixty months. If the political subdivision withdraws from participation in the uniform group insurance program, before completing sixty months of participation, the political subdivision shall make payment to the board in an amount equal to any expenses incurred in the uniform group insurance program that exceed income received on behalf of the political subdivision's employees as determined under rules adopted by the board. The Garrison Diversion Conservancy District, and district health units required to participate in the public employees retirement system under section 54-52-02, shall participate in the uniform group insurance program under the same terms and conditions as state agencies. A retiree who has accepted a retirement allowance from a participating political subdivision's retirement plan may elect to participate in the uniform group under this chapter without meeting minimum requirements at age sixty-five, when the employee's spouse reaches age sixty-five, upon the receipt of a benefit, when the political subdivision joins the uniform group insurance plan if the retiree was a member of the former plan, or when the spouse terminates employment. If a retiree or surviving spouse does not elect to participate at the times specified in this section, the retiree or surviving spouse must meet the minimum requirements established by the board. Each retiree or surviving spouse shall pay directly to the board the premiums in effect for the coverage then being provided. The board may require documentation that the retiree has accepted a retirement allowance from an eligible retirement plan other than the public employees retirement system.

Approved March 21, 2007

Filed March 21, 2007

**CHAPTER 486****SENATE BILL NO. 2045**

(Government and Veterans Affairs Committee)

(At the request of the Public Employees Retirement System Board)

**UNIFORM GROUP INSURANCE ADMINISTRATION**

AN ACT to create and enact a new subsection to section 54-52.1-02 of the North Dakota Century Code, relating to prescription drug coverage under the uniform group insurance program; and to amend and reenact subsection 3 of section 54-52.1-03.3 and sections 54-52.1-03.4 and 54-52.1-04 of the North Dakota Century Code, relating to the retiree health benefits fund, employer payment of a temporary employee's health insurance premium, temporary employee eligibility, and bids for prescription drug coverage under the uniform group insurance program.

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

**SECTION 1.** A new subsection to section 54-52.1-02 of the North Dakota Century Code is created and enacted as follows:

Retired medicare-eligible employee group prescription drug coverage.

**SECTION 2. AMENDMENT.** Subsection 3 of section 54-52.1-03.3 of the North Dakota Century Code is amended and reenacted as follows:

3. The board shall apply the credit allowable under subsection 2 to the payment of monthly premiums required of each person eligible under subsection 1 for hospital benefits coverage and medical benefits coverage under the uniform group insurance program. The board shall allow spouses who each have credit under subsection 2 to combine their credits and shall apply the combined credit to the required monthly premiums under the uniform group insurance program. However, if the allowable credit under any circumstance exceeds the monthly premium in effect for selected coverage, that amount of the credit which exceeds the premium is forfeited and may not be used for any other purpose.

**SECTION 3. AMENDMENT.** Section 54-52.1-03.4 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-03.4. Participation by employees of certain political subdivisions and temporary employees.** An employee of a county, city, school district, district health unit, or park district that is not participating in the uniform group insurance program pursuant to section 54-52.1-03.1 and is not eligible for any other employee group health plan may elect to participate in the uniform group insurance program by completing the necessary enrollment forms and qualifying under the medical underwriting requirements established by the board. The board may use risk-adjusted premiums for individual insurance contracts to implement the provisions of this section allowing employees of a county, city, school district, district health unit, or park district to participate in the uniform group insurance program. The county, city, school district, district health unit, or park district employee participating in the uniform group insurance program under this section shall pay monthly to the board the premiums in effect for the coverage being provided. A

temporary employee employed before August 1, 2007, may elect to participate in the uniform group insurance program by completing the necessary enrollment forms and qualifying under the medical underwriting requirements of the program. A temporary employee employed on or after August 1, 2007, is only eligible to participate in the uniform group insurance program if the employee is employed at least twenty hours per week and at least twenty weeks each year of employment. The temporary employee or the temporary employee's employer shall pay monthly to the board the premiums in effect for the coverage being provided. A political subdivision, department, board, or agency may ~~not~~ make a contribution for coverage under this section. ~~The board may employ one additional employee to implement the provisions of this section relating to participation by employees of a county, city, school district, district health unit, or park district in the uniform group insurance program.~~

**SECTION 4. AMENDMENT.** Section 54-52.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.1-04. Board to contract for insurance.** The board shall receive bids for the providing of hospital benefits coverage, medical benefits coverage, life insurance benefits coverage for a specified term, and employee assistance program services; may receive bids separately for retired medicare-eligible employee group prescription drug coverage; and shall accept the bid of and contract with the carrier that in the judgment of the board best serves the interests of the state and its eligible employees. Solicitations must be made not later than ninety days before the expiration of an existing uniform group insurance contract. Bids must be solicited by advertisement in a manner selected by the board that will provide reasonable notice to prospective bidders. In preparing bid proposals and evaluating bids, the board may utilize the services of consultants on a contract basis in order that the bids received may be uniformly compared and properly evaluated. In determining which bid, if any, will best serve the interests of eligible employees and the state, the board shall give adequate consideration to the following factors:

1. The economy to be effected.
2. The ease of administration.
3. The adequacy of the coverages.
4. The financial position of the carrier, with special emphasis as to its solvency.
5. The reputation of the carrier and any other information that is available tending to show past experience with the carrier in matters of claim settlement, underwriting, and services.

The board may reject any or all bids and, in the event it does so, shall again solicit bids as provided in this section. The board may establish a plan of self-insurance for providing health insurance benefits coverage only under an administrative services only (ASO) contract or a third-party administrator (TPA) contract.

Approved May 1, 2007  
Filed May 2, 2007

**CHAPTER 487****HOUSE BILL NO. 1432**

(Representatives Price, Svedjan, Weisz)  
(Senators Fischer, Holmberg, J. Lee)

**COLLABORATIVE DRUG THERAPY PROGRAM**

AN ACT to create and enact a new section to chapter 54-52.1 of the North Dakota Century Code, relating to health treatment management services for state employees and their families; and to provide a continuing appropriation.

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

**SECTION 1.** A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

**Uniform group insurance program - Collaborative drug therapy program - Continuing appropriation.**

1. The board may establish a collaborative drug therapy program available to individuals in the medical and hospital benefits coverage group. The purpose of the collaborative drug therapy program is to improve the health of individuals in identified health populations and to manage health care expenditures.
2. Under the program, the board may involve physicians, pharmacists, and other health professionals to coordinate health care for individuals in identified health populations in order to improve health outcomes and reduce spending on care for the identified health problem. Under the program, pharmacists and other health professionals may be reimbursed for providing face-to-face collaborative drug therapy services to covered individuals in the identified health population. To encourage enrollment in the plan, the board may provide incentives to covered individuals in the identified health population which may include waived or reduced copayment for related treatment drugs and supplies.
3. The board may request the assistance of the North Dakota pharmacists association or a specified delegate to implement a formalized disease management program with the approval of the prescriptive practices committee established in section 43-15-31.4, which must serve to standardize chronic disease care and improve patient outcomes. This program must facilitate enrollment procedures, provide standards of care, enable consistent documentation of clinical and economic outcomes, and structure an outcomes reporting system.
4. The board may seek and accept private contributions, gifts, and grants-in-aid from the federal government, private industry, and other sources for a collaborative drug therapy program for identified health populations. Any funds that may become available through contributions, gifts, grants-in-aid, or other sources to the board for a

collaborative drug therapy program are appropriated to the board on a continuing basis.

Approved April 10, 2007  
Filed April 11, 2007

**CHAPTER 488****HOUSE BILL NO. 1433**

(Representatives Price, Svedjan, Weisz)  
(Senators Fischer, Holmberg, J. Lee)

**DIABETES TREATMENT**

AN ACT to create and enact a new section to chapter 54-52.1 of the North Dakota Century Code, relating to diabetes treatment management services for state employees and their families.

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

**SECTION 1.** A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

**Uniform group insurance program - Collaborative drug therapy program - Funding.**

1. The board shall establish a collaborative drug therapy program that is to be available to individuals in the medical and hospital benefits coverage group. The purpose of the collaborative drug therapy program is to improve the health of individuals with diabetes and to manage health care expenditures.
2. The board shall involve physicians, pharmacists, and certified diabetes educators to coordinate health care for covered individuals with diabetes in order to improve health outcomes and reduce spending on diabetes care. Under the program, pharmacists and certified diabetes educators may be reimbursed for providing face-to-face collaborative drug therapy services to covered individuals with diabetes. To encourage enrollment in the plan, the board shall provide incentives to covered individuals who have diabetes which may include waived or reduced copayment for diabetes treatment drugs and supplies.
3. The North Dakota pharmacists association or a specified delegate shall implement a formalized diabetes management program with the approval of the prescriptive practices committee established in section 43-15-31.4, which must serve to standardize diabetes care and improve patient outcomes. This program must facilitate enrollment procedures, provide standards of diabetes care, enable consistent documentation of clinical and economic outcomes, and structure an outcomes reporting system.
4. The board shall fund the program from any available funds in the uniform group insurance program and if necessary the fund may add up to a two dollar per month charge on the policy premium for medical and hospital benefits coverage. A state agency shall pay any additional premium from the agency's existing appropriation.

Approved April 25, 2007  
Filed April 25, 2007

**CHAPTER 489****HOUSE BILL NO. 1065**

(Transportation Committee)

(At the request of the State Board of Higher Education)

**ADVISORY TRANSPORTATION COUNCIL  
MEMBERSHIP**

AN ACT to amend and reenact section 54-53-02 of the North Dakota Century Code, relating to the membership of the advisory transportation council of the upper great plains transportation institute.

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

**SECTION 1. AMENDMENT.** Section 54-53-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-53-02. Advisory transportation council - Composition.** There is established a transportation council that shall serve in an advisory capacity to the upper great plains transportation institute. The director of the institute shall serve as the executive secretary of the council. The council shall elect its own chairman. The council membership consists of one representative from and appointed by the following:

1. The greater North Dakota ~~association~~ chamber of commerce.
2. The North Dakota public service commission.
3. The North Dakota farm bureau.
4. The North Dakota farmers union.
5. The North Dakota grain growers association.
6. The North Dakota state wheat commission.
7. The North Dakota department of commerce.
8. The North Dakota grain dealers association.
9. The North Dakota motor carriers association.
10. The North Dakota aeronautics commission.
11. The North Dakota department of transportation.
12. The North Dakota agriculture commissioner.
13. The North Dakota association of general contractors.
14. The North Dakota railway industry, appointed by the council.

15. The North Dakota primary sector of manufacturing, appointed by the council.
16. The North Dakota association of counties.
17. The North Dakota league of cities.
18. The lignite energy council.

Members of the council shall serve without pay, but they may receive reimbursement for actual and necessary expenses incurred in the performance of their duties, if authorized by the director.

The council shall consult with the institute in matters of policy affecting the administration of this chapter and in the development of transportation in the state of North Dakota. The council shall meet at the call of the executive director or upon the written request of three or more members of the council.

Approved April 13, 2007  
Filed April 16, 2007



**CHAPTER 490****SENATE BILL NO. 2038**  
(Legislative Council)  
(Information Technology Committee)**INFORMATION TECHNOLOGY PROJECTS AND  
REPORT**

AN ACT to create and enact a new subsection to section 54-35-15.2 of the North Dakota Century Code, relating to powers and duties of the information technology committee; and to amend and reenact sections 54-59-02.1, 54-59-07, and 54-59-09 of the North Dakota Century Code, relating to major information technology projects, the state information technology advisory committee, and information technology standards.

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

<sup>229</sup> **SECTION 1.** A new subsection to section 54-35-15.2 of the North Dakota Century Code is created and enacted as follows:

Receive a report from the chief information officer regarding the recommendations of the state information technology advisory committee relating to the prioritization of proposed major information technology projects and other information technology issues.

**SECTION 2. AMENDMENT.** Section 54-59-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-59-02.1. Department shall establish certain standards for agencies - Advisory committee - Exceptions Prioritization of proposed major information technology projects.** ~~The department shall appoint an advisory committee consisting of representatives of state agencies for the purposes of prioritizing major computer software projects and establishing policies, standards, and guidelines submit information regarding proposed major information technology projects for executive branch state agencies, departments, and institutions, excluding institutions under control of the state board of higher education and agencies of the judicial and legislative branches with respect to the purchase of computer software and computer systems to the state information technology advisory committee. The committee shall review the projects and rank those projects that receive the committee's affirmative recommendation. The chief information officer shall submit recommendations of the advisory committee regarding the prioritization of major software information technology projects to the information technology committee for consideration by the committee and the drafting of appropriate legislation to implement the recommendations, the office of management and budget, and the appropriations committees of the legislative assembly. The judicial and legislative branches shall annually notify the advisory committee on their major~~

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<sup>229</sup> Section 54-35-15.2 was also amended by section 10 of House Bill No. 1021, chapter 21, section 3 of House Bill No. 1461, chapter 154, and section 2 of Senate Bill No. 2037, chapter 491.

~~computer software information technology projects and priorities. The chief information officer may exempt an agency from the policies, standards, and guidelines established by the committee to address situations unique to that agency.~~

**SECTION 3. AMENDMENT.** Section 54-59-07 of the North Dakota Century Code is amended and reenacted as follows:

**54-59-07. State information technology advisory committee.** The state information technology advisory committee consists of the chief information officer; the commissioner of higher education or the commissioner's designee; the attorney general or the attorney general's designee; the secretary of state or the secretary of state's designee; the tax commissioner or the commissioner's designee; the chief justice of the supreme court or the chief justice's designee; two members of the legislative assembly appointed by the legislative council; a minimum of eight members representing state agencies, appointed by the governor; and two members with technology management expertise representing private industry, appointed by the governor. The appointees of the governor serve at the pleasure of the governor. The governor shall designate the chairman of the committee. Additional members may be asked to participate at the request of the chairman. The department shall provide staff services to the committee. The members of the committee representing private industry are entitled to be compensated for time spent in attendance at meetings of the committee and for other travel as approved by the chairman of the committee at the rate of sixty-two dollars and fifty cents per day and are entitled to reimbursement for actual and necessary expenses incurred in the same manner as other state officials. The compensation and expenses are to be paid from appropriations for the department. The committee shall advise the department regarding statewide information technology planning and budgeting, services of the information technology department, and statewide information technology initiatives and policy and shall review reports on major information technology projects as required by this chapter and policies, standards, and guidelines developed by the department. The chief information officer shall submit recommendations of the committee regarding information technology issues to the information technology committee for its consideration.

<sup>230</sup> **SECTION 4. AMENDMENT.** Section 54-59-09 of the North Dakota Century Code is amended and reenacted as follows:

**54-59-09. Information technology standards.** Based on information from state agencies and institutions, the department and the office of management and budget shall develop statewide information technology policies, standards, and guidelines. The policies, standards, and guidelines must recognize the uniqueness of certain agencies and state which agencies are included or exempted from the policies, standards, and guidelines. The policies, standards, and guidelines must be reviewed by the state information technology advisory committee. ~~Unless an exemption is granted by the chief information officer, each~~ Each executive branch state agency and institution, excluding the institutions under the control of the board of higher education with respect to academic and research uses of information technology, shall comply with the policies and standards developed by the department and the office of management and budget unless the chief information officer exempts an agency from the policies, standards, and guidelines to address

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<sup>230</sup> Section 54-59-09 was also amended by section 5 of House Bill No. 1461, chapter 154.

situations unique to that agency. Unless an exemption is granted by the chief information officer, each entity receiving wide area network services provided by the department shall comply with the policies and standards developed by the department with respect to access to or use of wide area network services.

Approved March 13, 2007  
Filed March 14, 2007

**CHAPTER 491****SENATE BILL NO. 2037**  
(Legislative Council)  
(Information Technology Committee)**ITD DUTIES, PLANS, AND REPORT**

AN ACT to amend and reenact subdivision h of subsection 2 of section 12-60-24 and sections 54-35-15.2, 54-59-05, 54-59-11, 54-59-19, 54-59-20, and 54-59-21 of the North Dakota Century Code, relating to criminal history record checks, powers and duties of the information technology committee and the information technology department, information technology plans, the information technology department annual report, and access to the criminal justice information sharing system.

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

<sup>231</sup> **SECTION 1. AMENDMENT.** Subdivision h of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- h. The chief information officer of the information technology department for certain ~~employees~~ individuals under section 54-59-20.

<sup>232</sup> **SECTION 2. AMENDMENT.** Section 54-35-15.2 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-15.2. Information technology committee - Powers and duties.** The information technology committee has continuing existence and may meet and conduct its business during the legislative session and in the interim between sessions. The committee shall:

1. Meet at least once each calendar quarter.
2. Receive a report from the chief information officer of the state at each meeting.
3. Review the business plan of the information technology department.
4. ~~Address~~ Review macro-level ~~questions~~ issues relating to ~~the~~ information technology ~~department~~.

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<sup>231</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1313, chapter 374, section 1 of House Bill No. 1455, chapter 367, section 2 of House Bill No. 1490, chapter 70, section 3 of Senate Bill No. 2260, chapter 115, and section 4 of Senate Bill No. 2260, chapter 115.

<sup>232</sup> Section 54-35-15.2 was also amended by section 10 of House Bill No. 1021, chapter 21, section 3 of House Bill No. 1461, chapter 154, and section 1 of Senate Bill No. 2038, chapter 490.

5. Review the activities of the information technology department.
6. Review statewide information technology standards.
7. Review the statewide information technology plan.
8. ~~Conduct studies of~~ Review information technology efficiency and security.
9. ~~Make recommendations regarding~~ Review established or proposed information technology programs and information technology acquisition by the executive and judicial branches.
10. Except as provided in subsection 11, ~~receive and review the information, including a project startup report summarizing the project description, project objectives, business need or problem, cost-benefit analysis of, and project risks and a project closeout report summarizing the project objectives achieved, project budget and schedule variances, and lessons learned, from the information technology department and the affected agency regarding any major information technology project of an executive or judicial branch agency. A~~ For the purposes of this subsection, a major project is a project with a cost of two hundred fifty thousand dollars or more in one biennium or a total cost of five hundred fifty thousand dollars or more.
11. ~~Review the~~
  - a. ~~Receive and review information, including a project startup report summarizing the project description, project objectives, business need or problem, cost-benefit analysis of, and project risks and a project closeout report summarizing the project objectives achieved, project budget and schedule variances, and lessons learned, from the information technology department and the affected institution regarding any major project of the state board of higher education or any institution under the control of the state board of higher education if the project:~~
    - a- (1) Significantly impacts the statewide wide area network, including the campus access routers;
    - b- (2) Impacts the statewide library system; or
    - e- (3) Is an administrative project. An administrative project is a project that directly collects, aggregates, modifies, stores, or reports institutional student, financial, or human resources records or data and is provided primarily for administrative purposes.
  - b. For the purposes of this subsection, a major project is a project with a cost of two hundred fifty thousand dollars or more in one biennium or a total cost of five hundred thousand dollars or more.
12. ~~Perform periodic reviews to ensure that a major information technology project is on its projected schedule and within its cost projections. Receive and review information from the information technology department and the affected agency regarding any information~~

technology project of an executive branch agency with a total cost of between one hundred thousand and two hundred fifty thousand dollars as determined necessary by the information technology department.

<sup>233</sup> **SECTION 3. AMENDMENT.** Section 54-59-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-59-05. Powers and duties of department.** The department:

1. Shall provide, supervise, and regulate information technology of all executive branch state entities, excluding the institutions under the control of the board of higher education.
2. Shall provide network services in a way that ensures the network requirements of a single entity do not adversely affect the functionality of the whole network, facilitates open communications with the citizens of the state, minimizes the state's investment in human resources, accommodates an ever-increasing amount of traffic, supports rapid detection and resolution of problems, protects the network infrastructure from damage and security breaches, provides for the aggregation of data, voice, video, and multimedia into a statewide transport mechanism or backbone, and provides for the network support for the entity to carry out its mission.
3. May review and approve additional network services that are not provided by the department.
4. May purchase, finance the purchase, or lease equipment, software, or implementation services or replace, including by trade or resale, equipment or software as may be necessary to carry out this chapter. An agreement to finance the purchase of software, equipment, or implementation services may not exceed a period of five years. The department shall submit any intended financing proposal for the purchase of software, equipment, or implementation services under this subsection, which is in excess of one million dollars, to the budget section of the legislative council or the legislative assembly before executing a financing agreement. If the budget section or the legislative assembly does not approve the execution of a financing agreement, the department may not proceed with the proposed financing arrangement. The department may finance the purchase of software, equipment, or implementation services only to the extent the purchase amount does not exceed seven and one-half percent of the amount appropriated to the department during that biennium.
5. Shall review requests for lease, purchase, or other contractual acquisition of information technology as required by this subsection. Each executive branch agency or institution, excluding the institutions under the control of the board of higher education, shall submit to the department, in accordance with guidelines established by the department, a written request for the lease, purchase, or other

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<sup>233</sup> Section 54-59-05 was also amended by section 4 of House Bill No. 1461, chapter 154.

contractual acquisition of information technology. The department shall review requests for conformance with the requesting entity's information technology plan and compliance with statewide policies and standards. If the request is not in conformance or compliance, the department may disapprove the request or require justification for the departure from the plan or statewide policy or standard.

6. Shall provide information technology, including assistance and advisory service, to the executive, legislative, and judicial branches. If the department is unable to fulfill a request for service from the legislative or judicial branch, the information technology may be procured by the legislative or judicial branch within the limits of legislative appropriations.
7. Shall request and review information on or review information technology, applications, system development projects, and application development projects of executive branch agencies, including project startup information summarizing the project description, project objectives, business need or problem, cost-benefit analysis, and project risks and a project closeout information summarizing the project objectives achieved, project budget and schedule variances, and lessons learned, regarding any major information technology project of an executive branch agency, the state board of higher education, or any institution under the control of the state board of higher education as provided in section 54-35-15.2. The department shall present the information to the information technology committee on request of the committee.
8. May request and review information regarding any information technology project of an executive branch agency with a total cost of between one hundred thousand and two hundred fifty thousand dollars as determined necessary by the department. The department shall present the information to the information technology committee on request of the committee.
9. Shall study emerging technology and evaluate its impact on the state's system of information technology.
- ~~9.~~ 10. Shall develop guidelines for reports to be provided by each executive branch agency, institution, or department, the institutions under the control of the board of higher education, and agencies of the judicial and legislative branches on information technology in those entities.
- ~~40.~~ 11. Shall review the information technology management of executive branch agencies or institutions.
- ~~44.~~ 12. Shall perform all other duties necessary to carry out this chapter.
- ~~42.~~ 13. May provide wide area network services to a state agency, city, county, school district, or other political subdivision of this state. The information technology department may not provide wide area network service to any private, charitable, or nonprofit entity except the information technology department may continue to provide the wide area network service the department provided to the private, charitable, and nonprofit entities receiving services from the department on January 1, 2003. The department shall file with the state auditor before September 1,

2003, a description of the wide area network service the department provided to each private, charitable, and nonprofit entity receiving services from the department on January 1, 2003.

- ~~43.~~ 14. Shall assure proper measures for security, firewalls, and internet protocol addressing at the state's interface with other facilities.
- ~~44.~~ 15. Notwithstanding subsection ~~42~~ 13, ~~the department~~ may provide wide area network services for a period not to exceed four years to an occupant of a technology park associated with an institution of higher education or to a business located in a business incubator associated with an institution of higher education.

<sup>234</sup> **SECTION 4. AMENDMENT.** Section 54-59-11 of the North Dakota Century Code is amended and reenacted as follows:

**54-59-11. Information technology plans.** Each executive branch state agency or institution, including the institutions under the control of the board of higher education, shall prepare an information technology plan, subject to ~~approval~~ acceptance by the department. The plan must be submitted to the department by July fifteenth of each even-numbered year. The plan must be prepared based on guidelines developed by the department; must provide the information technology goals, objectives, and activities of the entity for the current biennium and the next two bienniums; and must include ~~information regarding an asset management plan relating to the inventory of~~ information technology assets owned, leased, or employed by the entity. Each entity required to file a plan shall provide interim updates to its plan if major information technology changes occur which affect its plan. The department shall review each entity's plan for compliance with statewide information technology policies and standards and may require an entity to change its plan to comply with statewide policies or standards or to resolve conflicting directions among plans. Agencies of the judicial and legislative branches shall file their information technology plans with the department by July fifteenth of each even-numbered year. ~~Each state entity required to file a plan shall prepare its budget request for the next biennium based on its information technology plan. The agency's budget request and the governor's budget recommendation must include supporting information describing in detail how the information technology plan relates to the budget request and recommendation. Any budget adjustment by the budget office must include the corresponding change to the plan. Based on the plans, the department shall prepare a statewide information technology plan and distribute copies of that plan to members of the legislative assembly as requested by the legislative council or its designee. The statewide information technology plan must be developed with emphasis on long-term strategic goals and, objectives, and accomplishments. The statewide information technology plan must contain:~~

1. A list of major projects started, ongoing, and completed during the biennium, including related budgeted and actual costs and the estimated implementation date for each project as well as the actual implementation date for completed projects.

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<sup>234</sup> Section 54-59-11 was also amended by section 6 of House Bill No. 1461, chapter 154.



2. Information regarding evaluations of cost-benefit analyses for completed projects.
3. Information regarding the information technology plans, including the department's plan review process, the number of plans reviewed, and the number of plans accepted.
4. A description of the benefits to the state resulting from its investment in information technology.

<sup>235</sup> **SECTION 5. AMENDMENT.** Section 54-59-19 of the North Dakota Century Code is amended and reenacted as follows:

**54-59-19. Information technology department annual report.** The department shall prepare and present an annual report to the information technology committee. In addition to the presentation of the annual report to the information technology committee, the department shall present a summary of the annual report to the budget section and to the legislative audit and fiscal review committee. The report must contain:

- ~~1. A list of major projects started, ongoing, and completed during the year including related budgeted and actual costs and the estimated implementation date for each project as well as the actual implementation date for completed projects.~~
- ~~2. A list of all projects for which financing agreements have been executed.~~
- ~~3. Information regarding evaluations of cost-benefit analyses for completed projects.~~
2. A comparison of the department's rates charged for services compared to rates charged for comparable services in other states and in the private sector.
- ~~5. Information regarding the information technology plans including the department's plan review process, the number of plans reviewed, and the number of plans approved.~~
- ~~6. A description of the benefits to the state resulting from its investment in information technology.~~
3. Information regarding the delivery of services to agencies, including service dependability, agency complaints, and information technology department responsiveness.

<sup>236</sup> **SECTION 6. AMENDMENT.** Section 54-59-20 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>235</sup> Section 54-59-19 was also amended by section 4 of Senate Bill No. 2028, chapter 63, and section 2 of Senate Bill No. 2118, chapter 492.

<sup>236</sup> Section 54-59-20 was also amended by section 20 of Senate Bill No. 2260, chapter 115.

**54-59-20. Employees of the department - Security background information.** The chief information officer shall require as a condition of employment with the department that individuals who have unescorted physical access to the facilities or other security sensitive areas of the department designated by the chief information officer submit to a criminal history record check in accordance with section 12-60-24. The chief information officer may require as a condition of contracting with the department or other state agency or department with respect to an information technology project that any individual employed by the contractor or a subcontractor to perform the work under the contract submit to a criminal history record check in accordance with section 12-60-24.

<sup>237</sup> **SECTION 7. AMENDMENT.** Section 54-59-21 of the North Dakota Century Code is amended and reenacted as follows:

**54-59-21. Criminal justice information sharing board - Membership - Duties and powers - Exempt records.** The criminal justice information sharing board consists of the chief justice of the supreme court or the chief justice's designee, the attorney general or the attorney general's designee, and the chief information officer of the state. The chief information officer is chairman of the board. The information technology department, at the direction of the board, shall maintain a criminal justice data information sharing system to facilitate the exchange of criminal justice information among judicial, law enforcement, and emergency personnel. Only a criminal justice agency, as defined in section 12-60-16.1, and any other person designated by the board may access the system. The system only may be accessed for the purposes set forth by the board. Any law enforcement record in the possession of the department is an exempt record. The information technology department shall provide staff and other necessary support to the board. The board shall set policy and adopt rules relating to the access to and the collection, storage, and sharing of criminal justice information and the systems necessary to perform those functions. The board shall provide operational oversight for criminal justice information sharing activities and shall approve and provide oversight of criminal justice information sharing budgets. The board may appoint an executive committee and an advisory committee that would serve in an advisory capacity to the board.

Approved April 12, 2007  
Filed April 13, 2007

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<sup>237</sup> Section 54-59-21 was also amended by section 18 of Senate Bill No. 2003, chapter 30.

**CHAPTER 492****SENATE BILL NO. 2118**

(Government and Veterans Affairs Committee)  
(At the request of the Information Technology Department)

**INFORMATION TECHNOLOGY REPORTS AND  
RECORDS**

AN ACT to create and enact a new subsection to section 54-59-19 of the North Dakota Century Code, relating to annual reporting requirements of the information technology department; and to amend and reenact section 54-46-11 of the North Dakota Century Code, relating to management of state records.

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

**SECTION 1. AMENDMENT.** Section 54-46-11 of the North Dakota Century Code is amended and reenacted as follows:

**54-46-11. Biennial Annual report.** The ~~biennial annual~~ annual report of the ~~director of the office of management and budget~~ information technology department made in accordance with ~~sections 54-06-04 and 54-44-04~~ section 54-59-19 must describe the status and progress of programs established pursuant to this chapter and must include the recommendations of the administrator for improvements in the management of records in the state government.

<sup>238</sup> **SECTION 2.** A new subsection to section 54-59-19 of the North Dakota Century Code is created and enacted as follows:

A description of the status and progress of programs established pursuant to chapter 54-46 and as specifically required by section 54-46-11.

Approved April 12, 2007  
Filed April 13, 2007

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<sup>238</sup> Section 54-59-19 was also amended by section 4 of Senate Bill No. 2028, chapter 63, and section 5 of Senate Bill No. 2037, chapter 491.

**CHAPTER 493****HOUSE BILL NO. 1137**

(Industry, Business and Labor Committee)  
(At the request of the Department of Commerce)

**ECONOMIC DEVELOPMENT ENTITIES AND MEMBERS**

AN ACT to create and enact three new sections to chapter 54-60 of the North Dakota Century Code, relating to the North Dakota American Indian business development office, the North Dakota women's business development office, and the international business and trade office; to amend and reenact sections 4-14.1-03, 10-30.5-03, 26.1-50-02, 54-34.3-06, 54-34.3-12, 54-60-04, and 55-01-01 of the North Dakota Century Code, relating to the composition of the agricultural products utilization commission, the North Dakota development fund, incorporated, board of directors, the North Dakota low-risk incentive fund governing board, the division of economic development and finance offices, the value-added agriculture promotion program, the North Dakota economic development foundation, the state historical board; and to repeal chapter 21-11 and sections 54-34.3-14 and 54-60-10 of the North Dakota Century Code, relating to the natural resources development bond issue, the international business and trade office, and the career guidance and job opportunities web site.

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

**SECTION 1.** Three new sections to chapter 54-60 of the North Dakota Century Code are created and enacted as follows:

**North Dakota American Indian business development office.** A North Dakota American Indian business development office is established within the department to assist North Dakota American Indian tribal and individual economic development representatives, businesses, and entrepreneurs with access to state and federal programs designed to assist these business interests. The office shall provide services to assist in the formation of partnerships between American Indian and non-American Indian businesses. The commissioner may contract with a third party for the provision of services for the office. If the commissioner contracts with a third party under this section, all data and data bases collected and created by the third party in performing services for the office are the property of the department and the third party.

**North Dakota women's business development office.** A North Dakota women's business development office is established within the department to develop and administer the North Dakota women's business program, to establish and fund the women's business leadership council, certify women-owned businesses for federal or state contracting, and to recruit, train, and assist women entrepreneurs to develop and diversify their businesses. The office must have an administrator and staff sufficient to implement the office's programs. The commissioner may contract with a third party for the provision of services for the office. If the commissioner contracts with a third party under this section, all data and data bases collected and created by the third party in performing services for the office are the property of the department and the third party.

**International business and trade office - Advisory board.**

1. The commissioner shall administer the international business and trade office. The purpose of the office is to assist North Dakota businesses expand exports to international markets by:
  - a. Advocating for exporters;
  - b. Offering export educational opportunities to North Dakota businesses;
  - c. Researching and raising awareness of export opportunities, issues, and challenges impacting North Dakota businesses;
  - d. Assisting North Dakota businesses in identifying, developing, and cultivating international markets for products; and
  - e. Organizing and carrying out trade missions that seek to facilitate contact and communication between North Dakota businesses and international markets.
2. The commissioner may contract with a third party for the provision of services for the international business and trade office. If the commissioner contracts with a third party under this subsection, all data and data bases collected and created by the third party in performing services for the office are the property of the department and the third party.
3. The department may seek and accept any gift, grant, or donation of funds, property, services, or other assistance from public or private sources for the purpose of furthering the objectives of the international business and trade office.
4. The commissioner may establish an international business and trade office advisory board with which the director may consult in administering the international business and trade office. Each member of the advisory board created under this subsection is entitled to receive per diem compensation at a rate established by the director not exceeding sixty-two dollars and fifty cents and reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directly related to board membership, except that per diem compensation under this section may not be paid to any member who receives compensation or salary as a regular state employee or official.

**SECTION 2. AMENDMENT.** Section 4-14.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**4-14.1-03. Agricultural products utilization commission - Composition - Appointment.** The agricultural fuel tax fund must be administered by the agricultural products utilization commission. The commission consists of nine members, five of whom must be appointed by the governor for terms of two years each, arranged so that two terms expire in odd-numbered years and three terms expire in even-numbered years. Three members appointed by the governor must be actively engaged in farming in this state and two members appointed by the governor must be actively engaged in business in this state. The agriculture commissioner shall

appoint one member for a term of two years which expires in odd-numbered years. The member appointed by the commissioner must be actively engaged in farming in this state. Commission members may be reappointed to the commission. Terms of commissioners shall run from the first day of July. The ~~director of the department commissioner~~ of commerce ~~division of economic development and finance~~, the president of North Dakota state university, and the agriculture commissioner, or their designees, are members of the commission. The commission shall elect one of its members as chairman.

**SECTION 3. AMENDMENT.** Section 10-30.5-03 of the North Dakota Century Code is amended and reenacted as follows:

**10-30.5-03. Organization.** A board of directors shall manage the corporation. The board of directors shall adopt and amend articles of incorporation and bylaws consistent with the purposes detailed in this chapter. The board of directors consists of eight members who shall serve three-year terms. The terms must be staggered so that no more than three positions require reappointment in any one year. The governor shall appoint the members and shall only consider representatives who serve in executive capacities from the following areas in making the selections: private sector manufacturing, finance, exported services, including tourism, and industrial technology and research. There must be at least one member who is enrolled in a federally recognized North Dakota Indian tribe who need not serve in an executive capacity, the ~~director of the department commissioner~~ of commerce ~~division of economic development and finance~~ or the ~~commissioner's designee~~, and one member from a rural area on the board of directors. Members may be reappointed for additional terms.

**SECTION 4. AMENDMENT.** Section 26.1-50-02 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-50-02. Establishment - Organization.** Any insurer or group of insurers may establish a corporation or limited liability company to own and operate the North Dakota low-risk incentive fund. Except as provided in this chapter, all authority regarding the articles of incorporation or articles of organization is the province of the governing board, which must include a representative of the Bank of North Dakota and the ~~director of the department commissioner~~ of commerce ~~division of economic development and finance~~ or the ~~commissioner's designee~~. The Bank of North Dakota shall administer the fund; however, the governing board is responsible for adopting fund policies and procedures. The governing board may not distribute more than seventy-five percent of the net profit of the fund in any of the first five years of operation.

**SECTION 5. AMENDMENT.** Section 54-34.3-06 of the North Dakota Century Code is amended and reenacted as follows:

**54-34.3-06. Division offices.** The director shall organize and establish other offices as necessary to carry out most efficiently and effectively the mission and duties of the division; ~~except that the division must contain:~~

4. ~~A North Dakota American Indian business development office to assist North Dakota American Indian tribal and individual economic development representatives, businesses, and entrepreneurs with access to state and federal programs designed to assist these business interests. The office shall provide services to assist in the formation of partnerships between American Indian and non-American Indian businesses.~~

- 2- A North Dakota women's business development office to develop and administer the North Dakota women's business program, to establish and fund the women's business leadership council, certify women-owned businesses for federal or state contracting and to recruit, train, and assist women entrepreneurs to develop and diversify their businesses. The office must have an administrator and staff sufficient to implement the office's programs.

**SECTION 6. AMENDMENT.** Section 54-34.3-12 of the North Dakota Century Code is amended and reenacted as follows:

**54-34.3-12. Value-added agriculture promotion ~~program~~ board.**

1. The value-added agriculture promotion board is established. The board consists of ~~eight~~ a minimum of nine and a maximum of eleven members as follows: the ~~director of the department~~ commissioner of commerce ~~division of economic development and finance~~ or the ~~director's representative~~ commissioner's designee; the agriculture commissioner or the commissioner's ~~representative~~ designee; a representative of the state board of agricultural research and education, appointed by the governor; a representative of the North Dakota state university extension service, appointed by the governor; a representative of the Bank of North Dakota, appointed by the governor; a minimum of two and a maximum of four representatives of the private sector, appointed by the governor; ~~and~~ a representative of the farm credit system, appointed by the governor; and a representative of the agricultural products utilization commission.
2. The board shall ~~administer the value-added agriculture promotion program and shall review business plans for value-added agriculture projects. The board shall adopt procedures and guidelines for administering the program. The board shall meet on a regular schedule to review project proposals and prioritize projects based on the projects' likelihood for success. The board shall promote the formation, development, and growth of these projects and take steps to improve the projects' chances for success.~~
  - a. Serve in an advisory role to the commissioner of commerce on issues related to value-added agriculture.
  - b. Meet at times determined by the commissioner of commerce.
  - c. Promote the formation, development, and growth of value-added agriculture projects across the state.
3. If a project is selected for promotion by the board, the board shall appoint a financing advisory group for the project. The financing advisory group may include representatives of the private sector, a representative of the Bank of North Dakota, and an individual experienced in capital formation. The financing advisory group, with active assistance provided by any of the state's institutions of higher education and the local or regional economic development organization, shall assist the project in completing a feasibility study and a business plan for the project and in seeking early stage money. The financing advisory group shall assist the project in pursuing equity investors, establishing an initial board of directors, locating professional services

~~for completion of the business plan, and in approaching lenders to fund the project development.~~

4. The value-added agriculture promotion ~~program board~~ is located in the department of commerce division of economic development and finance. The department shall provide any necessary administrative assistance. Members of the value-added agriculture promotion board ~~and members of a financing advisory group~~ are entitled to reimbursement for mileage and travel as specified in section 54-06-09 and expenses as specified in section 44-08-04 for performing their duties.
5. ~~The board may impose a fee of not more than one thousand dollars per project for review and assistance provided for the project. Fees collected under this section must be deposited in the operating fund of the department of commerce division of economic development and finance and may be expended for expenses of members of the board and the financing advisory group for review and assistance provided for the project.~~

**SECTION 7. AMENDMENT.** Section 54-60-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-60-04. North Dakota economic development foundation - Executive committee - Duties.** The North Dakota economic development foundation is created.

1. The foundation is composed of a minimum of fifteen and a maximum of thirty members appointed by the governor for two-year terms, except the governor shall appoint approximately one-half of the initial foundation members to one-year terms in order to initiate a cycle of staggered terms. Appointment of the foundation members must ensure a cross section of business, tourism, and economic development representation, and must ensure that at least one member represents rural concerns.
2. The foundation members shall elect an executive committee with a minimum of five and a maximum of seven foundation members. ~~The executive committee members shall elect,~~ which shall include a chairman, vice chairman, and a secretary, treasurer, and up to three members at large.
3. The foundation shall seek funding for administrative expenses from private sector sources and shall seek and distribute private sector funds for use in commerce-related activities in the state.
4. The foundation shall:
  - a. Provide the governor advice and counsel in selecting the commissioner.
  - b. Serve in an advisory role to the commissioner.
  - c. Develop a strategic plan for economic development in the state and set accountability standards, measurements, and benchmarks



- to evaluate the effectiveness of the department in implementing the strategic plan.
- d. Develop a strategic plan for the development of value-added agriculture in the state.
  - e. Monitor tourism and economic development activities and initiatives of the department.
  - f. Recommend state and federal legislation relating to strengthening the state's economy and increasing the state's population.
  - g. Monitor state and federal legislation and initiatives that may impact the state's economy and population.
  - h. Serve as a source of expertise for developing public and private initiatives to strengthen the state's economy and increase the state's population.

**SECTION 8. AMENDMENT.** Section 55-01-01 of the North Dakota Century Code is amended and reenacted as follows:

**55-01-01. State historical board.** The board consists of twelve members, seven of whom are appointed by the governor. Each member appointed to the board must be a citizen and resident of the state. Appointments are for a term of three years from the first day of July to the thirtieth day of June of the third year or until a successor has been appointed and qualified. Vacancies occurring other than by the expiration of an appointive term must be filled by appointment for the remainder of the term only in the same manner as regular appointments. The remaining five members of the board are the secretary of state, director of the parks and recreation department, director of the department of transportation, ~~director of the department~~ commissioner of commerce ~~division of tourism~~, and state treasurer, each of whom may appoint a designee to attend meetings with full voting privileges. The board shall select from its membership a president, vice president, and secretary to serve as officers of the board.

<sup>239</sup> **SECTION 9. REPEAL.** Chapter 21-11 and sections 54-34.3-14 and 54-60-10 of the North Dakota Century Code are repealed.

Approved March 15, 2007  
Filed March 15, 2007

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<sup>239</sup> Section 54-60-10 was amended by section 5 of Senate Bill No. 2028, chapter 63.

**CHAPTER 494****HOUSE BILL NO. 1095**

(Industry, Business and Labor Committee)  
(At the request of the Department of Commerce)

**BUSINESS INCENTIVES, AGREEMENTS, AND  
REPORTS**

AN ACT to amend and reenact subsection 2 of section 54-60.1-01 and subsection 3 of section 54-60.1-02 of the North Dakota Century Code, relating to business incentives, agreements, and reports.

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

<sup>240</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 54-60.1-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Business incentive" means a state or political subdivision direct cash transfer, loan, or equity investment; contribution of property or infrastructure; reduction or deferral of any tax or any fee; guarantee of any payment under any loan, lease, or other obligation; or preferential use of government facilities given to a business. To be considered a business incentive, the total assistance in all forms must be valued at twenty-five thousand dollars or more committed within a year. Unless specifically provided otherwise, the term does not include:
  - a. Assistance that is generally available to all businesses or to a general class of similar businesses, such as a line of business, size, or similar criteria.
  - b. Incentives resulting from Bank of North Dakota programs unless the incentive is a direct interest rate buydown, ~~is made pursuant to the beginning entrepreneur loan guarantee program,~~ or is an investment made pursuant to the North Dakota alternative and venture capital investments and early-stage capital funds program.
  - c. Public improvements to buildings or lands owned by the state or political subdivision which serve a public purpose and do not principally benefit a single business or defined group of businesses at the time the improvements are made.
  - d. Assistance provided for the sole purpose of renovating old or decaying building stock or bringing such building stock up to code and assistance provided for designated historic preservation districts, provided that the assistance does not exceed seventy-five percent of the total cost.

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<sup>240</sup> Section 54-60.1-01 was also amended by section 39 of House Bill No. 1018, chapter 18, and section 4 of House Bill No. 1128, chapter 464.

- e. Assistance to provide job readiness and training services if the sole purpose of the assistance is to provide those services.
- f. Assistance for housing.
- g. Assistance for pollution control or abatement.
- h. Assistance for energy conservation.
- i. Tax reductions resulting from conformity with federal tax law.
- j. Benefits derived from regulation.
- k. Indirect benefits derived from assistance to educational institutions.
- l. Except for a center of excellence award under chapter 15-69, assistance for a collaboration between a North Dakota institution of higher education and a business.
- m. Redevelopment if the recipient's investment in the purchase of the site and in site preparation is seventy percent or more of the assessor's current year's estimated market value.
- n. General changes in tax increment financing law and other general tax law changes of a principally technical nature.
- o. Federal assistance provided through the state or a political subdivision until the assistance has been repaid to, and reinvested by, the state or political subdivision.
- p. Federal or state assistance for the lignite research, development, and marketing program under chapter 54-17.5.

**SECTION 2. AMENDMENT.** Subsection 3 of section 54-60.1-02 of the North Dakota Century Code is amended and reenacted as follows:

- 3. A state business incentive in the form of a direct cash transfer that is not a structured grant under state or federal law must be structured as a loan, a forgivable loan, or as a preferred share that includes provisions for surrender.

Approved March 6, 2007  
Filed March 7, 2007

**CHAPTER 495****HOUSE BILL NO. 1059**

(Representatives DeKrey, Delmore)

(At the request of the Commission on Legal Counsel for Indigents)

**COMMISSION ON LEGAL COUNSEL FOR INDIGENTS  
INFORMATION CONFIDENTIALITY**

AN ACT to amend and reenact section 54-61-04 of the North Dakota Century Code, relating to confidentiality of commission on legal counsel for indigents information and records.

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

**SECTION 1. AMENDMENT.** Section 54-61-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-61-04. Records, files, and information - Accessibility - Confidentiality.**

Any file, record, or information regarding representation of a defendant under sections 54-61-01 through 54-61-03 which are attorney work-product or otherwise subject to any attorney-client privilege are confidential and may not be disclosed except in accordance with a court order or in response to applicable discovery rules. All other case-related records are exempt from disclosure except as otherwise provided in rules adopted by the commission. Information or records obtained by the commission relating to allegations of misconduct by an attorney in the employ of, or providing indigent services for, the commission are exempt from disclosure except as otherwise provided in rules adopted by the commission unless and until the matter is referred for formal disposition under rules adopted by the supreme court.

Approved March 23, 2007

Filed March 23, 2007

**CHAPTER 496****SENATE BILL NO. 2288**

(Senators Nething, Erbele, Heitkamp)  
(Representatives DeKrey, Gulleson, Nelson)

**RENEWABLE ENERGY COUNCIL**

AN ACT to provide for a biomass energy center; to create and enact a new chapter to title 54 of the North Dakota Century Code, relating to a renewable energy council and development fund; to amend and reenact sections 4-14.1-09 and 39-04-39 of the North Dakota Century Code, relating to ethanol and renewable fuels incentives and distribution of motor vehicle registration fees; to provide an appropriation; and to provide a continuing appropriation.

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

**SECTION 1. AMENDMENT.** Section 4-14.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**4-14.1-09. Subsidy limitations.** The office of renewable energy and energy efficiency may not distribute more than one million six hundred thousand dollars per eligible facility annually in payments under section 4-14.1-08 and may not distribute any payment that would create a negative ethanol production incentive fund balance. If the incentive fund balance is insufficient to pay all valid incentive requests received in any quarter, the funds available must be paid out on a pro rata basis and obligations may not be carried forward. No eligible facility may receive state ethanol payments that exceed a cumulative total of ten million dollars or for longer than ten years. Change in ownership of an eligible facility does not affect the ten million dollar cumulative total allowed to be paid to that eligible facility under this section or the ten-year limitation contained in this section.

**SECTION 2. State board of higher education - Biomass energy center.** The state board of higher education is encouraged to establish or name a biomass energy center or centers at an institution or institutions under the control of the board to conduct research and provide education and technical assistance related to biomass production, harvesting, transportation, and conversion.

**SECTION 3. Biomass research responsibilities.** If established or named by the state board of higher education, the biomass energy center or centers shall:

1. Complete agronomic research to determine the most efficient perennial grasses or other plants for cellulose production and the amount of fertilization required.
2. Conduct research to determine the most efficient method of harvesting biomass.
3. Determine the benefits of biomass densification or preprocessing.
4. Complete an economic evaluation of all steps in the utilization of biomass for energy.

**SECTION 4. Ethanol and biomass incentives.** If established or named by the state board of higher education, the biomass energy center or centers shall work to identify and evaluate incentives for cellulosic ethanol production and biomass energy through the legislative assembly or at the federal level. The center or centers shall identify and evaluate incentives for producers, such as providing payment for producers to grow a dedicated bio-energy crop or support equipment, harvesting, and transportation costs.

**SECTION 5. Funding.** The biomass energy center or centers shall seek funding to continue perennial biomass production research and education.

**SECTION 6. AMENDMENT.** Section 39-04-39 of the North Dakota Century Code is amended and reenacted as follows:

**39-04-39. Distribution of registration fees collected.** Any moneys in the registration fund accruing from license fees or from other like sources, in excess of the amount required to pay salaries and other necessary expenses, in accordance with the legislative assembly's appropriation for such purposes, must be promptly deposited in the highway tax distribution fund which must be distributed in the manner as prescribed by law. The state treasurer shall transfer annually from the highway tax distribution fund to the ethanol production incentive fund an amount equal to forty percent of all sums collected for the registration of farm vehicles under subsection 5 of section 39-04-19 except that no transfer may be made in an amount that would result in the balance of the ethanol production incentive fund exceeding ~~five~~ seven million five hundred thousand dollars.

**SECTION 7.** A new chapter to title 54 of the North Dakota Century Code is created and enacted as follows:

**Renewable energy council - Composition.** The industrial commission shall consult with the renewable energy council in matters of policy affecting the administration of the renewable energy development fund.

1. The renewable energy council consists of:
  - a. The commissioner of commerce or the commissioner's designee.
  - b. A member with a substantial interest in the agriculture industry appointed by the governor.
  - c. A member with a substantial interest in the biodiesel industry appointed by the governor representing biodiesel interests.
  - d. A member with a substantial interest in the biomass industry appointed by the governor representing biomass interests.
  - e. A member with a substantial interest in the wind industry appointed by the governor representing wind interests.
  - f. A member with a substantial interest in the ethanol industry appointed by the governor representing ethanol interests.
2. Subject to subsection 6, the terms of office for members of the council are three years but of those first appointed, two serve for one year, two serve for two years, and three serve for three years.

3. The commissioner of commerce shall serve as chairman.
4. The council shall have at least one regular meeting each year and such additional meetings as the chairman determines necessary at a time and place to be fixed by the chairman. Special meetings must be called by the chairman on written request of any three members. Four members constitute a quorum.
5. The council shall recommend to the industrial commission the approval of grants, loans, or other financial assistance necessary or appropriate for funding, research, development, marketing, and educational projects or activities and any other matters related to this chapter. Any grants, loans, or other financial assistance must be matched on a dollar-for-dollar basis.
6. Members of the council serve at the pleasure of the governor.

**Access to council records.**

1. Materials and data submitted to, or made or received by, the council or industrial commission, to the extent that the council or industrial commission determines the materials or data consist of trade secrets or commercial, financial, or proprietary information of individuals or entities applying to or contracting with the commission or receiving council or industrial commission services under this chapter, are subject to section 44-04-18.4.
2.
  - a. A person or entity must file a request with the council or industrial commission to have material designated as confidential under subsection 1. The request must contain any information required by the council or industrial commission and must include at least:
    - (1) A general description of the nature of the information sought to be protected.
    - (2) An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons.
    - (3) An explanation of why the information is not readily ascertainable by proper means by other persons.
    - (4) A general description of a person or entity that may obtain economic value from disclosure or use of the information, and how the person or entity may obtain this value.
    - (5) A description of the efforts used to maintain the secrecy of the information.
  - b. The fact that a request has been made is exempt.
3. The information submitted pursuant to subsection 2 is confidential. The council or industrial commission shall examine the request and determine whether the information is relevant to the matter at hand and is a trade secret under the definition in section 47-25.1-01 or 44-04-18.4. If the council or industrial commission determines the

information is either not relevant or not a trade secret, the council or industrial commission shall notify the requester and the requester may ask for the return of the information and request within ten days of the notice. If no return is sought, the information and request are a public record.

4. The names or identities of independent technical reviewers on a project or program and the names of council members making recommendations are confidential, may not be disclosed by the council, and are not public records subject to section 44-04-18 or section 6 of article XI of the Constitution of North Dakota.

**Industrial commission powers.**

1. The industrial commission may:
  - a. Make grants or loans, and provide other forms of financial assistance as necessary or appropriate, to qualified persons for feasibility studies, applied research and demonstrations, venture capital investments, grants and matching grants, and low-interest loans and loan buydowns to foster the development of renewable energy, including wind, biofuels, biomass, solar, hydroelectric, geothermal, and hydrogen, that is produced from the foregoing renewable energy sources.
  - b. Provide incentives for multifeed facilities to process corn ethanol, cellulosic ethanol, canola biodiesel, and soy biodiesel.
  - c. Provide incentives for scaleable technologies.
  - d. Provide incentives to increase efficiencies such as coproduct utilization technologies.
  - e. Execute contracts and all other instruments necessary or convenient for the performance of its powers and functions under this chapter.
  - f. Accept aid, grants, or contributions of money or other things of value from any source, to be held, used, and applied to carry out this chapter, subject to the conditions upon which the aid, grants, or contributions are made, including aid, grants, or contributions from any department, agency, or instrumentality of the United States for any purpose consistent with this chapter.
  - g. Establish interest buydown programs for equipment needed for production, harvest, storage, and transport under the special private lands open to sportsmen pilot program for native grass stands.
  - h. Fund technical assistance from the university system and private entities to producers.
2. The industrial commission shall contract with the department of commerce to provide technical assistance to the renewable energy council and the industrial commission to carry out and effectuate the purposes of this chapter, including pursuit of aid, grants, or contributions



of money or other things of value from any source for any purpose consistent with this chapter. The department may contract with a public or private third party to provide any or all of the technical assistance necessary to implement the purposes of this chapter.

**Renewable energy development fund - Continuing appropriation.** The renewable energy development fund is a special fund in the state treasury. All funds in the renewable energy development fund are appropriated to the industrial commission on a continuing basis for the purpose of carrying out and effectuating this chapter. Interest earned by the fund must be credited to the fund.

**SECTION 8. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$3,000,000, or so much of the sum as may be necessary, and \$17,000,000 in special funds, or so much of the sum as may be necessary, to the industrial commission for the purpose of carrying out the renewable energy development functions under section 7 of this Act, for the biennium beginning July 1, 2007, and ending June 30, 2009.

Approved April 27, 2007  
Filed April 30, 2007

# STATE HISTORICAL SOCIETY AND STATE PARKS

## CHAPTER 497

### SENATE BILL NO. 2341

(Senators Andrist, Fischer, Horne)  
(Representatives Aarsvold, D. Johnson, Martinson)

### HERITAGE CENTER EXPANSION

AN ACT to provide a statement of legislative intent and legislative support; and to provide a contingent appropriation to the office of management and budget for the heritage center expansion project.

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

**SECTION 1. LEGISLATIVE INTENT - FUTURE FUNDING FOR HERITAGE CENTER EXPANSION.** It is the intent of the legislative assembly that the office of management and budget consider providing funding to the state historical society for the heritage center expansion project in the 2009-11 executive budget recommendation if the state historical society is able to demonstrate progress toward fundraising goals and federal funding is secured for the project. The sixty-first legislative assembly shall consider appropriating funding to the state historical society for the heritage center expansion project if the state historical society is able to demonstrate progress toward fundraising goals and federal funding is secured for the project.

**SECTION 2. HERITAGE CENTER EXPANSION - LEGISLATIVE SUPPORT.** The sixtieth legislative assembly supports the efforts of the state historical society in fundraising and securing federal funding for the heritage center expansion during the 2007-09 biennium.

**SECTION 3. CONTINGENT APPROPRIATION - LANDS AND MINERALS TRUST FUND.** There is appropriated out of any moneys in the lands and minerals trust fund the sum of \$1,500,000 on a contingency basis to the office of management and budget for the planning and design costs of the heritage center expansion project, for the biennium beginning July 1, 2007, and ending June 30, 2009. The appropriation is only available when the state historical society certifies to the office of management and budget that \$1,500,000 of private funds has been received and is available for the project. The private funds must be spent before the funds from the lands and minerals trust fund.

Approved May 4, 2007  
Filed May 4, 2007

# TAXATION

## CHAPTER 498

### HOUSE BILL NO. 1450

(Representatives Wrangham, Bellew, Thoreson)  
(Senator Krauter)

#### HOME RULE SALES TAX LIMITATIONS

AN ACT to amend and reenact section 57-01-02.1 of the North Dakota Century Code, relating to refunds by retailers of home rule sales and use taxes; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-01-02.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-01-02.1. Tax collection agreements with home rule cities or counties - Limitations on city or county authority.**

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 chapter 11-09.1 must enter a contract with the tax commissioner giving the tax commissioner authority to collect any sales, use, or gross receipts taxes assessed by such incorporated city or county.
2. The tax commissioner shall deposit with the state treasurer all money collected under a contract under this section and accompany each remittance with a certificate showing the city or county for which it was collected. The state treasurer, monthly, shall pay to the auditors of cities or counties the money to which cities or counties are entitled under a contract under this section.
3. Contracts under this section shall provide for an agreed amount to be allowed the tax commissioner for services. Any sums collected for services rendered must be paid to the state treasurer for deposit in the general fund.
4. A person required to collect and remit sales or use taxes may not be required to register with, file returns with, or remit funds to anyone other than the tax commissioner or the tax commissioner's authorized agent. A city or county may not conduct an independent sales or use tax audit of a seller registered under the agreement adopted under chapter 57-39.4.
5. A retailer shall collect city and county sales and use taxes without regard to any cap or threshold on purchases provided by city or county ordinance, resolution, or charter and a taxpayer is eligible for refund from the tax commissioner of the difference between the amount of city

and county sales, use, or gross receipts taxes paid and the amount that would have been due by application of a cap or threshold provided by city or county ordinance, resolution, or charter. At the time of purchase, a retailer may provide to the purchaser a credit or refund equal to the refund amount eligible from the tax commissioner under this section, provided the total tax identified on all invoices, cash register receipts, or other sales documentation is an amount equal to the total tax calculated less the refund or credit provided.

6. The tax commissioner may adopt rules to implement this section.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2007.

Approved March 28, 2007  
Filed March 28, 2007

**CHAPTER 499****SENATE BILL NO. 2172**

(Senators G. Lee, Tollefson, Triplett)  
(Representatives Belter, Froelich, Klemin)

**DISABLED VETERAN HOMESTEAD PROPERTY TAX  
EXEMPTION**

AN ACT to amend and reenact subsection 20 of section 57-02-08 of the North Dakota Century Code, relating to the homestead property tax exemption for disabled veterans; and to provide an effective date.

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

<sup>241</sup> **SECTION 1. AMENDMENT.** Subsection 20 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

20. Fixtures, buildings, and improvements up to the amount of valuation specified, when owned and occupied as a homestead, as hereinafter defined, by any of the following persons:
  - a. A paraplegic disabled veteran of the United States armed forces or any veteran who has been awarded specially adapted housing by the veterans' administration, or the unremarried surviving spouse if such veteran is deceased, for the first one hundred twenty thousand dollars of true and full valuation of the fixtures, buildings, and improvements.
  - b. A disabled veteran of the United States armed forces who was discharged under honorable conditions or who has been retired from the armed forces of the United States with an armed forces service-connected disability of fifty percent or greater, or the unremarried surviving spouse if the veteran is deceased, if the income of the veteran and the spouse, or if the veteran is deceased the income of the unremarried surviving spouse, in the calendar year prior to the year for which the exemption is claimed did not exceed the maximum amount of income provided in section 57-02-08.1 for receiving a homestead credit under that section exclusive of any compensation or pension for service-connected disability from the United States government for a percentage, equal to the percentage of the disabled veteran's certified rated service-connected disability, applied against the first one hundred twenty thousand dollars of true and full valuation of the fixtures, buildings, and improvements.
  - c. Any permanently and totally disabled person who is permanently confined to use of a wheelchair, or, if deceased, the unremarried

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<sup>241</sup> Section 57-02-08 was also amended by section 3 of House Bill No. 1072, chapter 504.

surviving spouse of a permanently and totally disabled person. If the spouse of a permanently and totally disabled person owns the homestead or if it is jointly owned by them, the same reduction in assessed valuation applies as long as both reside thereon. The provisions of this subdivision do not reduce the liability for special assessments levied upon the homestead. The phrase "permanently confined to use of a wheelchair" means that the person cannot walk with the assistance of crutches or any other device and will never be able to do so and that a physician selected by the local governing board has so certified.

Any person claiming an exemption under this subsection for the first time shall file with the county auditor an affidavit showing the facts herein required and a description of the property and, in addition, a disabled veteran claiming exemption under subdivision b shall also file with the affidavit a certificate from the United States veterans' administration, or its successors, certifying to the amount of the disability; ~~the~~. The affidavit and certificate must be open for public inspection. ~~Any person shall thereafter furnish to the assessor or other assessment officials when requested to do so any information which is believed will support the claim for exemption for any subsequent year~~ After the initial filing of a claim for exemption under this subsection, the exemption is automatically renewed each following year but the veteran or veteran's unremarried surviving spouse must refile if that person sells the property or no longer claims it as a primary place of residence or if the veteran dies or receives a change in the percentage of the certified rated service-connected disability.

For purposes of this subsection, and except as otherwise provided in this subsection, "homestead" has the meaning provided in section 47-18-01 except that it also applies to any person who otherwise qualifies under the provisions of this subsection whether or not the person is the head of a family. The board of county commissioners is hereby authorized to cancel the unpaid taxes for any year in which the veteran has held title to the exempt property.

This subsection does not apply within a county in which a resolution approved by the board of county commissioners is in effect disallowing the exemption under this subsection for the taxable year.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2006.

Approved May 2, 2007  
Filed May 3, 2007

**CHAPTER 500****SENATE BILL NO. 2088**

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

**HOMESTEAD TAX CREDIT DISABILITY DEFINITION**

AN ACT to amend and reenact subsection 5 of section 57-02-08.1 of the North Dakota Century Code, relating to the definition of permanently and totally disabled for purposes of homestead property tax credit eligibility.

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

<sup>242</sup> **SECTION 1. AMENDMENT.** Subsection 5 of section 57-02-08.1 of the North Dakota Century Code is amended and reenacted as follows:

5. For the purposes of this section:
  - a. "Dependent" has the same meaning it has for federal income tax purposes.
  - b. "Homestead" has the same meaning as provided in section 47-18-01.
  - c. "Income" means income for the most recent complete taxable year from all sources, including the income of any dependent of the applicant, and including any county, state, or federal public assistance benefits, social security, or other retirement benefits, but excluding any federal rent subsidy, any amount excluded from income by federal or state law, and medical expenses paid during the year by the applicant or the applicant's dependent which is not compensated by insurance or other means.
  - d. "Medical expenses" has the same meaning as it has for state income tax purposes, except that for transportation for medical care the person may use the standard mileage rate allowed for state officer and employee use of a motor vehicle under section 54-06-09.
  - e. "Permanently and totally disabled" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months as

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<sup>242</sup> Section 57-02-08.1 was also amended by section 1 of Senate Bill No. 2032, chapter 520.

established by a certificate from a licensed physician or a written determination of disability from the social security administration.

Approved March 2, 2007  
Filed March 2, 2007



**CHAPTER 501****HOUSE BILL NO. 1071**

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

**TAX LAW TECHNICAL CORRECTIONS**

AN ACT to amend and reenact subsection 1 of section 11-10.1-01, section 57-02-08.2, subsections 3 and 6 of section 57-02-27.2, section 57-20-08, and subsection 3 of section 57-60-01 of the North Dakota Century Code, relating to removal of obsolete language, transfer of funds to the state medical center, appeals of determinations on inundated agricultural land applications, tax receipts filed with county auditors, and coal conversion facilities; and to repeal section 57-29-04 of the North Dakota Century Code, relating to tax sale certificates on state-acquired land.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 11-10.1-01 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~Prior to September 4, 1978, the~~ The board of county commissioners of each county in this state shall appoint a county director of tax equalization who must be qualified and experienced in property appraisals, familiar with assessment and equalization procedures and techniques, and who is the holder of a current certificate issued by the state supervisor of assessments. The state supervisor of assessments shall confer with representatives of the county commissioners, city governing bodies, state township officers association, and personnel at North Dakota state university to establish or revise the minimum requirements for attaining the certificate. Any person who is denied such certificate may appeal to the state tax commissioner for a hearing under the provisions of chapter 28-32.

**SECTION 2. AMENDMENT.** Section 57-02-08.2 of the North Dakota Century Code is amended and reenacted as follows:

**57-02-08.2. Homestead credit - Certification.**

1. Prior to the first of March 4, 1975, and of each year thereafter, the county auditor of each county shall certify to the state tax commissioner on forms prescribed by the state tax commissioner the name and address of each person for whom the homestead credit provided for in section 57-02-08.1 was allowed for the preceding year, the amount of exemption allowed, the total of the tax mill rates of all taxing districts, exclusive of any state mill rates, that was applied to other real estate in such taxing districts for the preceding year, and such other information as may be prescribed by the tax commissioner.
2. The tax commissioner shall audit such certifications, make such corrections as may be required, and certify to the state treasurer for payment to each county on or before the first of June 4, 1975, and of each year thereafter, the sum of the amounts computed by multiplying

the exemption allowed for each such homestead in the county for the preceding year by the total of the tax mill rates, exclusive of any state mill rates, that was applied to other real estate in such taxing districts for that year.

3. The county treasurer upon receipt of the payment from the state treasurer shall ~~forthwith~~ apportion and distribute it without delay to the county and to the local taxing districts of the county on the basis on which the general real estate tax for the preceding year is apportioned and distributed.
4. The tax commissioner shall annually certify to the state treasurer the amount computed by multiplying the exemption allowed for all homesteads in the state for the preceding year by one mill for deposit into the state medical center fund.
5. 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~~ in this section to make such corrections as may be necessary because of errors ~~therein~~ or because of approval of any application for abatement filed by a person because the exemption provided for in section 57-02-08.1 was not allowed in whole or in part.

<sup>243</sup> **SECTION 3. AMENDMENT.** Subsections 3 and 6 of section 57-02-27.2 of the North Dakota Century Code are amended and reenacted as follows:

3. The "average annual gross return" for each county must be determined as follows:
  - a. ~~For taxable year 1999, total the annual gross returns for the nine years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the nine. For taxable year 2000 and thereafter, total~~ Total the annual gross returns for the ten years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the ten.
  - b. The agricultural economics department of North Dakota state university shall establish a base year index of prices paid by farmers using annual statistics on that topic compiled by the national agricultural statistics service for the seven-year period ending in 1995, discarding the highest and lowest years' indexes, and averaging the remaining five years' indexes. ~~For taxable year 1999, the agricultural economics department shall gather the national agricultural statistics service annual index of prices paid by farmers for the nine years ending with the most recent year used under subdivision a; discard the highest and lowest years' indexes, average the remaining seven years' indexes, and divide the resulting amount by the base year index of prices paid by~~

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<sup>243</sup> Section 57-02-27.2 was also amended by section 1 of House Bill No. 1303, chapter 503, and section 2 of House Bill No. 1303, chapter 503.

~~farmers. For taxable year 2000 and thereafter, the~~ The agricultural economics department shall gather the national agricultural statistics service annual index of prices paid by farmers for the ten years ending with the most recent year used under subdivision a, discard the highest and lowest years' indexes, average the remaining eight years' indexes, and divide the resulting amount by the base year index of prices paid by farmers. This amount must be divided into the amount determined under subdivision a.

c. ~~For taxable year 1998, divide the figure arrived at in subdivision b by six. For taxable year 1999, divide the figure arrived at in subdivision b by seven. For taxable year 2000 and thereafter, divide~~ Divide the figure arrived at in subdivision b by eight.

6. For purposes of this section, "inundated agricultural land" means property classified as agricultural property containing a minimum of ten contiguous acres if the value of the inundated land exceeds ten percent of the average agricultural value of noncropland for the county, which is inundated to an extent making it unsuitable for growing crops or grazing farm animals for two consecutive growing seasons or more, and which produced revenue from any source in the most recent prior year which is less than the county average revenue per acre for noncropland calculated by the agricultural economics department of North Dakota state university. Application for classification as inundated agricultural land must be made in writing to the township assessor or county director of tax equalization by March thirty-first of each year, ~~except that for the year 2001, the written application must be made within ninety days from March 16, 2001.~~ Before all or part of a parcel of property may be classified as inundated agricultural land, the board of county commissioners must approve that classification for that property for the taxable year. The agricultural value of inundated agricultural lands for purposes of this section must be determined by the agricultural economics department of North Dakota state university to be ten percent of the average agricultural value of noncropland for the county as determined under this section. Valuation of individual parcels of inundated agricultural land may recognize the probability that the property will be suitable for agricultural production as cropland or for grazing farm animals in the future. Determinations made under this subsection may be appealed through the informal equalization process and formal abatement process provided for in this title.

**SECTION 4. AMENDMENT.** Section 57-20-08 of the North Dakota Century Code is amended and reenacted as follows:

**57-20-08. Tax receipts filed with county auditor - Copies retained and filed numerically by county treasurer.** Upon the payment of any tax, if directed by the board of county commissioners, the county treasurer shall give to the county auditor a receipt therefor showing the name and post-office address of the person who paid the tax, the amount and date of payment, the land, lot, or other property upon which the tax is levied, according to the description on the tax list, or in some other sufficient manner, and the year or years for which the tax was levied. If for current taxes on real estate, the receipt must have written or stamped across its face "taxes for" (giving the year in figures) or "first installment taxes" (giving the year in figures) or "second installment taxes" (giving the year in figures), as the case may be. Each year's tax must be on a separate receipt. If the county treasurer has given notice of tax lien for land has been sold for taxes, either to a purchaser or to the

~~county, and the time for redemption from such sale and the tax lien has not expired been foreclosed, the receipt for such taxes must have written or stamped across the face "sold for taxes tax lien", with a statement of the years for which any of the real estate described therein has been sold for taxes and not redeemed is subject to a tax lien.~~ If directed by the board of county commissioners, the treasurer shall provide receipts at the end of each day to the county auditor, who shall file and preserve them in the auditor's office charging the treasurer with the amount thereof. A copy of each receipt must be preserved in the office of the county treasurer and filed in numerical order.

<sup>244</sup> **SECTION 5. AMENDMENT.** Subsection 3 of section 57-60-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Coal conversion facility" means any of the following:
  - a. A plant, other than an electrical generating plant or a coal beneficiation plant, with all additions thereto, which processes or converts coal from its natural or beneficiated form into a form substantially different in chemical or physical properties, including 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 [453592.37 metric tons] of coal per year;
  - b. An electrical generating plant, with all additions thereto, which processes or converts coal from its natural or beneficiated form into electrical power and which has at least one single electrical energy generation unit with a capacity of ten thousand kilowatts or more;
  - c. A plant, with all additions thereto, which is designed for coal beneficiation; or
  - d. A gas-fired electrical generating facility, and all additions to the facility, which generates electrical power through the consumption of gas produced by the conversion of lignite from its natural or beneficiated form into gas and has a capacity of ten thousand kilowatts or more.

**SECTION 6. REPEAL.** Section 57-29-04 of the North Dakota Century Code is repealed.

Approved March 13, 2007  
Filed March 14, 2007

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<sup>244</sup> Section 57-60-01 was also amended by section 3 of House Bill No. 1365, chapter 530.

**CHAPTER 502****SENATE BILL NO. 2299**

(Senators Holmberg, Horne, Wardner)  
(Representatives Boehning, Carlson, Ruby)

**VACANT LOT VALUATION**

AN ACT to amend and reenact section 57-02-27.1 of the North Dakota Century Code, relating to city governing body authority to adopt a standard of valuation that recognizes the supply of vacant lots; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-02-27.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-02-27.1. Property to be valued at true and full value.** Beginning with the year 1981, all assessors and boards of equalization shall place the values of all items of taxable property at the true and full value of the property except as otherwise specifically provided by law, and the amount of taxes that may be levied on such property for the year 1981 and each year thereafter must be limited as provided in this chapter. For the purposes of sections 57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04, the term "true and full value" has the same meaning as provided in subsection 15 of section 57-02-01, except that "true and full value" of agricultural lands must be as determined pursuant to section 57-02-27.2.

The governing body of the city may establish valuations that recognize the supply of vacant lots available for sale.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2006.

Approved May 2, 2007  
Filed May 3, 2007

**CHAPTER 503****HOUSE BILL NO. 1303**

(Representatives Herbel, Drovdal)  
(Senators Krauter, Olafson)

**AGRICULTURAL PROPERTY ASSESSMENT**

AN ACT to create and enact subsections 9 and 10 to section 57-02-27.2 of the North Dakota Century Code, relating to use of modifiers and soil surveys in agricultural property assessment; to amend and reenact subsections 7 and 8 of section 57-02-27.2 of the North Dakota Century Code, relating to use of soil surveys, modifiers, and actual use of agricultural property for property tax assessment purposes; to provide for a report to the legislative council; and to provide an effective date.

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

<sup>245</sup> **SECTION 1. AMENDMENT.** Subsections 7 and 8 of section 57-02-27.2 of the North Dakota Century Code are amended and reenacted as follows:

7. Before 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. The estimate must 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, ~~whenever possible,~~ shall use soil type and soil classification data from detailed and general soil surveys. ~~When such data cannot be used, the county director of tax equalization shall use whatever previous assessment data is best suited to the purpose.~~
8. Each local assessor shall determine the relative value of each assessment parcel within the assessor's jurisdiction and shall 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 must then be assessed according to 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 must be provided to the county director of tax equalization. In determining the relative value of each assessment parcel, the local assessor shall apply the following considerations, which are listed in descending order of significance to the assessment determination:

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<sup>245</sup> Section 57-02-27.2 was also amended by section 3 of House Bill No. 1071, chapter 501, and section 2 of House Bill No. 1303, chapter 503.

- a. Soil type and soil classification data from detailed or general soil surveys.
- b. The schedule of modifiers that must be used to adjust agricultural property assessments within the county as approved by the state supervisor of assessments under subsection 9.
- c. Actual use of the property for cropland or noncropland purposes by the owner of the parcel.

<sup>246</sup> **SECTION 2.** Subsections 9 and 10 to section 57-02-27.2 of the North Dakota Century Code are created and enacted as follows:

9. Before February first of each year, the county director of tax equalization in each county shall provide to all assessors of agricultural property within the county a schedule of modifiers that must be used to adjust agricultural property assessments within the county and directions regarding how those modifiers must be applied by assessors. Before the schedule of modifiers is provided to assessors within the county, the county director of tax equalization shall obtain the approval of the state supervisor of assessments for use of the schedule within the county.
10. For any county that has not fully implemented use of soil type and soil classification data from detailed or general soil surveys for any taxable year after 2009, the tax commissioner shall direct the state treasurer to withhold five percent of that county's allocation each month from the state aid distribution fund under section 57-39.2-26.1 until that county has fully implemented use of soil type or soil classification data from detailed and general soil surveys. The amount withheld from the allocation must be withheld entirely from the portion of the allocation which may be retained by the county and may not reduce allocations to any political subdivisions within the county.

**SECTION 3. REPORT TO LEGISLATIVE COUNCIL.** During the 2007-08 interim, each county that has not fully implemented use of soil type and soil classification data from detailed and general soil surveys for property tax assessment purposes shall report to the legislative council the reason for failure to implement use of that information and the anticipated date when the county will have fully implemented use of that information.

**SECTION 4. EFFECTIVE DATE.** Sections 1 and 2 of this Act are effective for taxable years beginning after December 31, 2006.

Approved April 23, 2007  
Filed April 24, 2007

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<sup>246</sup> Section 57-02-27.2 was also amended by section 3 of House Bill No. 1071, chapter 501, and section 1 of House Bill No. 1303, chapter 503.

**CHAPTER 504****HOUSE BILL NO. 1072**

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

**TAXABLE VALUATION OF WIND TURBINES**

AN ACT to create and enact a new section to chapter 57-06 of the North Dakota Century Code, relating to taxable valuation of centrally assessed wind turbine electric generators; to amend and reenact subsection 4 of section 57-02-27, subsection 27 of section 57-02-08, and subsection 4 of section 57-06-02 of the North Dakota Century Code, relating to valuation of centrally assessed property, property exempt from taxation, and the definition of a power company; and to repeal section 57-02-27.3 of the North Dakota Century Code, relating to centrally assessed wind turbine electric generators.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 57-02-27 of the North Dakota Century Code is amended and reenacted as follows:

4. All centrally assessed property to be valued at ten percent of assessed value except as provided in section ~~57-02-27.3~~ 2 of this Act.

<sup>247</sup> **SECTION 2.** A new section to chapter 57-06 of the North Dakota Century Code is created and enacted as follows:

**Taxable valuation of centrally assessed wind turbine electric generators.**

A centrally assessed wind turbine electric generation unit with a nameplate generation capacity of one hundred kilowatts or more, on which construction is completed before January 1, 2011, must be valued at three percent of assessed value to determine taxable valuation of the property. However, a centrally assessed wind turbine electric generation unit with a nameplate generation capacity of one hundred kilowatts or more, for which a purchased power agreement has been executed after April 30, 2005, and before January 1, 2006, and construction is begun after April 30, 2005, and before July 1, 2006, must be valued at one and one-half percent of assessed value to determine taxable valuation of the property and this reduced valuation applies for that property for the duration of the initial purchased power agreement for that generation unit.

<sup>248</sup> **SECTION 3. AMENDMENT.** Subsection 27 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

27. Installations, machinery, and equipment of systems in new or existing buildings or structures, designed to provide heating or cooling or to

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<sup>247</sup> Section 57-06-14.1 was also amended by section 41 of House Bill No. 1018, chapter 18, and section 2 of House Bill No. 1317, chapter 505.

<sup>248</sup> Section 57-02-08 was also amended by section 1 of Senate Bill No. 2172, chapter 499.



produce electrical or mechanical power, or any combination of these, or to store any of these, by utilization of solar, wind, or geothermal energy; provided, that if the solar, wind, or geothermal energy device is part of a system which uses other means of energy, only that portion of the total system directly attributable to solar, wind, or geothermal energy shall be exempt. Provided, however, that any exemptions granted by this subsection shall be valid for a five-year period following installation of any such system and apply only to locally assessed property. For the purposes of this subsection, solar or wind energy devices shall have the meaning provided in section 57-38-01.8; geothermal energy device means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, by a method which extracts or converts the energy naturally occurring beneath the earth's surface in rock structures, water, or steam.

**SECTION 4. AMENDMENT.** Subsection 4 of section 57-06-02 of the North Dakota Century Code is amended and reenacted as follows:

4. "Power company" means a company owning or holding, under lease or otherwise, any property in this state, including wind turbine electric generation units, and operating it for the purpose of furnishing or distributing electric light, electric power, or steam heat for public use.

**SECTION 5. REPEAL.** Section 57-02-27.3 of the North Dakota Century Code is repealed.

Approved April 4, 2007  
Filed April 5, 2007

**CHAPTER 505****HOUSE BILL NO. 1317**

(Representatives Brandenburg, Dahl, S. Kelsh, Kretschmar)  
(Senators Erbele, Wanzek)

**WIND TURBINE TAXABLE VALUATION AND  
DECOMMISSIONING**

AN ACT to create and enact a new section to chapter 49-02 of the North Dakota Century Code, relating to authority of the public service commission to adopt rules relating to decommissioning of commercial wind energy conversion facilities; to amend and reenact the new section to chapter 57-06 of the North Dakota Century Code as created by section 2 of House Bill No. 1072, as approved by the sixtieth legislative assembly, relating to centrally assessed wind turbine electric generators; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 49-02 of the North Dakota Century Code is created and enacted as follows:

**Power of commission to establish rules to decommission wind energy conversion facilities.** The commission may adopt rules governing the decommissioning of commercial wind energy conversion facilities. The rules may address:

1. The anticipated life of the project;
2. The estimated decommissioning costs in current dollars;
3. The method and schedule for updating the costs of the decommissioning and restoration;
4. The method of ensuring that funds will be available for decommissioning and restoration; and
5. The anticipated manner in which the project will be decommissioned and the site restored.

<sup>249</sup> **SECTION 2. AMENDMENT.** The new section to chapter 57-06 of the North Dakota Century Code as created by section 2 of House Bill No. 1072, as approved by the sixtieth legislative assembly, is amended and reenacted as follows:

**Taxable valuation of centrally assessed wind turbine electric generators.** A centrally assessed wind turbine electric generation unit with a nameplate generation capacity of one hundred kilowatts or more on which construction is

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<sup>249</sup> Section 57-06-14.1 was created by section 2 of House Bill No. 1072, chapter 504; was also amended by section 41 of House Bill No. 1018, chapter 18.

completed before July 1, 2007, must be valued at the current assessed value to determine taxable valuation of the property. A centrally assessed wind turbine electric generation unit with a nameplate generation capacity of one hundred kilowatts or more, on which construction is completed after June 30, 2007, and before January 1, 2011, must be valued at ~~three~~ one and one-half percent of assessed value to determine taxable valuation of the property. However, a centrally assessed wind turbine electric generation unit with a nameplate generation capacity of one hundred kilowatts or more, for which ~~a purchased power agreement has been executed after April 30, 2005, and before January 1, 2006, and construction is begun after April 30, 2005, July 1, 2007, and before July 1, 2006, January 1, 2011,~~ must be valued at one and one-half percent of assessed value to determine taxable valuation of the property ~~and this reduced valuation applies for that property for the duration of the initial purchased power agreement for that generation unit.~~

**SECTION 3. EFFECTIVE DATE.** Section 2 of this Act is effective for taxable years beginning after December 31, 2006.

Approved April 27, 2007  
Filed April 30, 2007

**CHAPTER 506****HOUSE BILL NO. 1073**

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

**CARBON DIOXIDE PIPELINE PROPERTY VALUATION**

AN ACT to amend and reenact section 57-06-17.2 of the North Dakota Century Code, relating to the exclusion of carbon dioxide pipeline property subject to payments in lieu of taxes from the valuation of property in taxing districts.

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

**SECTION 1. AMENDMENT.** Section 57-06-17.2 of the North Dakota Century Code is amended and reenacted as follows:

**57-06-17.2. Payments in lieu of taxes.** Carbon dioxide pipeline property described in section 57-06-17.1 is subject to payments in lieu of property taxes during the time it is exempt from taxation under section 57-06-17.1. For the purpose of these payments, carbon dioxide pipeline property described in section 57-06-17.1 must be valued annually by the state board of equalization in the manner that other pipeline valuations are certified. The county auditor shall calculate taxes on the carbon dioxide pipeline property described in section 57-06-17.1 in the same manner that taxes are calculated on other pipeline property. Not later than December twenty-sixth of each year, each county auditor shall submit a statement of the amount of taxes that would have been assessed against carbon dioxide pipeline property, exempted under section 57-06-17.1, to the state treasurer for payment. The state treasurer shall make the required payment to each county not later than March first of the following year, and the county auditor shall distribute the payments to the political subdivisions in which the exempt pipeline property is located. Carbon dioxide pipeline property for which payments in lieu of taxes are required must be excluded from the valuation of property in the taxing district for purposes of determining the mill rate for the taxing district.

Approved March 30, 2007

Filed March 30, 2007

**CHAPTER 507****HOUSE BILL NO. 1139**

(Representatives Vigesaa, Weisz)

(Senators Andrist, Warner)

**FARM-TO-MARKET ROAD TAX LEVIES**

AN ACT to amend and reenact subsection 4 of section 57-15-06.3 of the North Dakota Century Code, relating to county farm-to-market road tax levies; and to provide for retroactive application.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 57-15-06.3 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~Any~~ Upon resolution of the board of county commissioners, any proceeds of a tax levy in excess of the amount needed to match federal funds in any year may be used by the county, at any time the proceeds may become available, for providing paved or any other type of road surfacing on, or for maintenance of, roads included within the county road program for which the tax levy was originally made or for any new project included in an amended program.

**SECTION 2. RETROACTIVE APPLICATION.** Section 1 of this Act is retroactive to apply to road programs that were the subject of elections held before August 1, 1987.

Approved March 12, 2007

Filed March 13, 2007

**CHAPTER 508****HOUSE BILL NO. 1312**

(Representatives Conrad, Wolf)  
(Senator Horne)

**SCHOOL DISTRICT LEVY CORRECTION**

AN ACT to create and enact section 57-15-63.1 of the North Dakota Century Code, relating to relevy by a school district of property taxes omitted by mistake; to provide an effective date; and to provide an expiration date.

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

**SECTION 1.** Section 57-15-63.1 of the North Dakota Century Code is created and enacted as follows:

**57-15-63.1. (Effective through December 31, 2011) Mistake in levy - Levy increase in later year - Levy reverts.**

1. Notwithstanding sections 57-15-01.1 and 57-15-14, if a mistake occurred in the 2006 tax year which resulted in a reduction of twenty mills or more in the amount a school district intended to be levied, as of the October tenth deadline under section 57-15-31.1, not being levied and the mistake has been brought to the attention of the county auditor or county treasurer of any county with land in the school district by February 1, 2007, the taxing district may include the amount that was mistakenly not levied in the taxing district's budget and general fund levy for a single tax year, or spread among one or more tax years, in tax years 2007 through 2011.
2. If the resulting general fund levy for the tax year is above one hundred eighty-five mills, the taxing district need not comply with chapter 57-16.
3. After a tax year in which a taxing district's levy increase authority under this section is exhausted, the taxing district's general fund levy must revert to the general fund levy as it would have been determined without application of this section, plus any increase authorized by law or the taxing district may elect to apply subsection 5 to determine its general fund levy limitation.
4. Before any taxable year may be used as a "base year" under section 57-15-01.1 or a "prior school year" under section 57-15-14 and before any taxable year may be used as a basis for allocation of funds among school districts, any amount included in that taxable year's levy under this section must be deducted.
5. A school district that uses this section to determine its general fund levy may use the amount it intended to levy in the 2006 tax year as its "base year" under section 57-15-01.1 or as its "prior school year" under section 57-15-14.
6. In any allocation of funds among school districts in which the school district mill rate or levy in dollars is used, the 2006 tax year mill rate and

levy in dollars for a school district eligible for a levy increase under this section must be replaced by the mill rate and levy in dollars that would have been levied without the mistake and the 2007 through 2011 tax year mill rates and levies in dollars for a school district applying a levy increase under this section must be reduced to the amount of the mill rate and levy in dollars without the levy increase under this section. The school district shall notify the tax commissioner and superintendent of public instruction of the amount the correct 2006 tax year mill rate and levy in dollars would have been.

**SECTION 2. EFFECTIVE DATE - EXPIRATION DATE.** This Act is effective for taxable years beginning after December 31, 2006, and before January 1, 2012, and is thereafter ineffective.

Approved April 10, 2007  
Filed April 11, 2007

**CHAPTER 509****HOUSE BILL NO. 1446**

(Representatives Kaldor, Onstad, Vig)  
(Senators Lindaas, Oehlke, Olafson)

**TOWNSHIP EXCESS LEVY APPROVAL**

AN ACT to amend and reenact section 57-17-06 of the North Dakota Century Code, relating to the amount of an excess levy that may be approved for townships; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-17-06 of the North Dakota Century Code is amended and reenacted as follows:

**57-17-06. Limitation of amount of excess levy.** No excess levy may be authorized under the provisions of this chapter in excess of fifty percent over and above the basic legal limitations prescribed in chapter 57-15, except that an excess levy may be authorized for a township up to one hundred percent over and above the basic legal limitations prescribed in chapter 57-15.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2006.

Approved April 12, 2007  
Filed April 13, 2007



**CHAPTER 510****HOUSE BILL NO. 1332**  
(Representatives Wieland, Aarsvold)  
(Senators Bowman, Triplett)**PROPERTY TAX DELINQUENCIES**

AN ACT to create and enact section 57-20-01.2 of the North Dakota Century Code, relating to waiver of penalties and interest on delinquent property taxes; to amend and reenact sections 15-08-19, 57-20-26, and 57-28-01 of the North Dakota Century Code, relating to the period of property tax delinquency before foreclosure of a tax lien; to provide an effective date; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 15-08-19 of the North Dakota Century Code is amended and reenacted as follows:

**15-08-19. Taxation of and foreclosure of tax lien on property sold by state on deferred payment contract.** Property contracted to be sold by the state is subject to taxation from the date of the contract, and the taxes assessed thereon must be collected and enforced in the same manner as taxes against other property. If the contract is not canceled or if the contract has been canceled and the period of redemption has not yet run, the property upon which taxes are delinquent is subject to foreclosure of tax lien. After ~~four~~ two years from the date the tax became due, and after notice of foreclosure has been given as required in title 57, on the date of foreclosure, the county shall acquire such rights and interests as belonged to the holder and owner of the contract issued under the provisions of this chapter and only such rights. The county may assign its rights and interest at any time, and the assignee shall have the rights given by this section to the county. No tax deed may be issued upon any tax sale certificate while the legal title to the lands remains in the state of North Dakota.

**SECTION 2.** Section 57-20-01.2 of the North Dakota Century Code is created and enacted as follows:

**57-20-01.2. (Effective through October 1, 2011) Penalty and interest waiver.** The board of county commissioners may establish a policy to waive all or part of penalties and interest on delinquent real estate taxes if the board of county commissioners believes the reduced period for foreclosure of tax liens under this Act creates a hardship for taxpayers. The board shall apply the policy uniformly to all taxpayers.

**SECTION 3. AMENDMENT.** Section 57-20-26 of the North Dakota Century Code is amended and reenacted as follows:

**57-20-26. Treasurer to give notice of tax lien by mail.** Between the first and fifteenth of November of each year, the county treasurer shall mail to each owner of any lot or tract of land for which taxes are delinquent a notice giving the legal description of that lot or tract and stating that the taxes are delinquent and constitute a lien against the property. The notice must advise the owner that unless the delinquent taxes and special assessments with penalty, simple interest at the

rate of twelve percent per annum from and after January first following the year in which the taxes become due and payable, and costs established under subsection 5 of section 57-28-04 are paid by October first of the ~~fourth~~ second year following the year in which the taxes became delinquent, the county auditor will foreclose on the tax lien and issue a tax deed to the county.

**SECTION 4. AMENDMENT.** Section 57-28-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-28-01. Notice of foreclosure of tax lien to be given.** On or before June first in each year, the county auditor shall give notice of foreclosure of tax lien for all property for which ~~four~~ two or more years have passed since the tax became due.

**SECTION 5. EFFECTIVE DATE - EXPIRATION DATE.** Sections 1, 3, and 4 of this Act are effective for taxable years beginning after December 31, 2006. Property tax proceedings relating to property taxes due or delinquent for any taxable year prior to 2007 are subject to provisions of law that were in effect on December 31, 2006. Section 2 of this Act is effective through October 1, 2011, and is thereafter ineffective.

Approved April 5, 2007  
Filed April 5, 2007

**CHAPTER 511****HOUSE BILL NO. 1186**

(Representatives Aarsvold, Wall)  
(Senators Heitkamp, Lindaas, Tallackson, Urlacher)

**PROPERTY TAX PROTEST AND ABATEMENTS**

AN ACT to amend and reenact sections 57-20-20, 57-20-21, and 57-23-06 of the North Dakota Century Code, relating to property taxes paid under protest and hearings on applications for abatement; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-20-20 of the North Dakota Century Code is amended and reenacted as follows:

**57-20-20. Payment of tax under protest - Determination of uncontested amount.** 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, that person 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 the person's application within sixty days, it shall notify the applicant of the disposition of the person's application and of the person's right to appeal as provided by law. The application to the board of county commissioners must show the post-office address of the taxpayer and notice to such address by registered or certified mail is sufficient service of the notice of rejection or approval of the taxpayer's application.

The uncontested amount of taxes paid under protest is the amount of taxes that would be payable if the application for abatement, adjustment, or refund is approved by the board of county commissioners as submitted.

**SECTION 2. AMENDMENT.** Section 57-20-21 of the North Dakota Century Code is amended and reenacted as follows:

**57-20-21. Segregation of contested amount of taxes paid under protest.** Whenever taxes have been paid under protest, the county treasurer shall deduct the uncontested amount of the taxes paid under protest as determined under section 57-20-20 and keep the contested amount of the money thus paid and collected in a separate fund known as "taxes paid under protest fund" and such moneys. The uncontested amount of taxes paid under protest may be allocated immediately as provided by law. The amount deposited in the taxes paid under protest fund may not be paid or disbursed to the state, to any fund of the county, nor to any local taxing district, until the period prescribed in section 57-20-20 has expired, and in case an action is commenced, the county treasurer shall retain the contested amount in such fund, until such action is finally determined; ~~that part or portion of the tax paid under protest which the plaintiff in the complaint contends is invalid or illegal.~~

**SECTION 3. AMENDMENT.** Section 57-23-06 of the North Dakota Century Code is amended and reenacted 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 must be set for no more than sixty days after the date of the notice of hearing, and in any event, must 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 do 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 must 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, in whole or in part, a written explanation of the rationale for the decision, signed by the chairman of the board, must be attached to the application, and a copy thereof must be mailed by the county auditor to the applicant at the post-office address specified in the application.
3. At a hearing before the board of county commissioners on an application for abatement, the applicant or the applicant's representative or attorney is limited to the relief claimed in the application for abatement submitted to the board of county commissioners. The applicant or applicant's representative or attorney may not submit evidence during a hearing on an application for abatement suggesting a lower valuation, a lower tax levy, or a different taxable status than was requested in the application for abatement submitted to the board of county commissioners.

**SECTION 4. EFFECTIVE DATE.** This Act is effective for property taxes paid under protest after July 31, 2007.

Approved March 7, 2007  
Filed March 8, 2007

**CHAPTER 512****SENATE BILL NO. 2091**

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

**TAX RETURN DUE DATES**

AN ACT to amend and reenact section 57-35.3-06, subsection 3 of section 57-38-31.1, subsection 2 of section 57-38-34, and section 57-38-63 of the North Dakota Century Code, relating to the due date for filing short period financial institutions tax and corporate income tax returns, composite returns filed by passthrough entities, and the due date for estimated tax payments by corporations for short-period tax years; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-35.3-06 of the North Dakota Century Code is amended and reenacted as follows:

**57-35.3-06. Tax return.** On or before April fifteenth of each year, the taxpayer shall file with the commissioner, on forms or in a manner prescribed by the commissioner, a report in writing under oath showing the amount of taxable income of the financial institution for the preceding calendar year. A return for a period of less than one year must be filed on or before April fifteenth, or on or before the date prescribed by the United States internal revenue service, whichever is later. If required by the commissioner, the return must be accompanied by a true copy of the federal income tax return of the taxpayer or by equivalent information in the form and manner prescribed by the commissioner. A true copy of the federal income tax return must be furnished to the commissioner by the taxpayer at any time after the taxpayer has filed the return required by this section if required by the commissioner before the expiration of the applicable period for assessment of additional tax liability under section 57-38-38. The commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that has the same validity and consequence as the actual signature and written declaration for a paper return. The commissioner may grant a reasonable extension of time for filing a return under the standards and terms applicable to other corporations under section 57-38-34.

**SECTION 2. AMENDMENT.** Subsection 3 of section 57-38-31.1 of the North Dakota Century Code is amended and reenacted as follows:

3. a. A passthrough entity shall withhold income tax, at the highest tax rate provided in section 57-38-30.3 for individuals, on the share of income of the entity distributed to each nonresident member and pay the withheld amount in the manner prescribed by the tax commissioner. The passthrough entity is liable to the state for the payment of the tax required to be withheld under this section and is not liable to any member for the amount withheld and paid over in compliance with this section. A member of a passthrough entity that is itself a passthrough entity (a lower-tier passthrough entity) is subject to this same requirement to withhold and pay over income tax on the share of income distributed by the lower-tier passthrough entity to each of its nonresident members. The tax

commissioner shall apply tax withheld and paid over by a passthrough entity on distributions to a lower-tier passthrough entity to the withholding required of that lower-tier passthrough entity.

- b. At the time of a payment made under this section, a passthrough entity shall deliver to the tax commissioner a return upon a form prescribed by the tax commissioner showing the total amounts paid or credited to its nonresident members, the amount withheld in accordance with this section, and any other information the tax commissioner may require. A passthrough entity shall furnish to its nonresident member annually, but not later than the fifteenth day of the third month after the end of its taxable year, a record of the amount of tax withheld on behalf of such member on a form prescribed by the tax commissioner.
- c. Notwithstanding subdivision a, a passthrough entity is not required to withhold tax for a nonresident member if:
  - (1) The member has a pro rata or distributive share of income of the passthrough entity from doing business in, or deriving income from sources within, this state of less than one thousand dollars per annual accounting period;
  - (2) The tax commissioner has determined by rule, ruling, or instruction that the member's income is not subject to withholding;
  - (3) The member elects to have the tax due paid as part of a composite return filed by the passthrough entity under subsection 2; or
  - (4) The entity is a publicly traded partnership as defined by section 7704(b) of the Internal Revenue Code which is treated as a partnership for the purposes of the Internal Revenue Code and which has agreed to file an annual information return reporting the name, address, taxpayer identification number, and other information requested by the tax commissioner of each unitholder with an income in the state in excess of five hundred dollars.
- d. A passthrough entity failing to file a return, or failing to withhold or remit the tax withheld, as required by this section, is subject to the provisions of section 57-38-45.

**SECTION 3. AMENDMENT.** Subsection 2 of section 57-38-34 of the North Dakota Century Code is amended and reenacted as follows:

2. Returns made on the basis of the calendar year must be filed on or before the fifteenth day of April following the close of the calendar year and returns made on the basis of a fiscal year must be filed on or before the fifteenth day of the fourth month following the close of the fiscal year. A return filed for a period of less than one year must be filed on or before April fifteenth, or on or before the date prescribed by the United States internal revenue service, whichever is later.

**SECTION 4. AMENDMENT.** Section 57-38-63 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-63. Due date for payment of estimated income tax.** A taxpayer shall pay no less than one-quarter of the estimated tax to the tax commissioner on April fifteenth, June fifteenth, and September fifteenth of the taxable year, and January fifteenth of the following taxable year; provided, that a taxpayer having a taxable year other than a calendar year shall pay the estimated tax on the fifteenth day of the fourth, sixth, and ninth months of the taxable year, and the fifteenth day of the first month of the following taxable year. In the case of a tax year that is for a period of less than one year, and the short tax year ends prior to any remaining due dates under this section, the final estimated tax payment is due on the fifteenth day of the last month of the short tax year. In the case of a tax year that is for a period of less than one hundred twenty days, no estimated tax payment is due.

**SECTION 5. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2006.

Approved March 2, 2007  
Filed March 2, 2007

**CHAPTER 513****HOUSE BILL NO. 1393**

(Representatives Froelich, Charging)  
(Senator Marcellais)

**INDIAN INCOME AND SALES TAX EXEMPTIONS**

AN ACT to create and enact a new subdivision to subsection 1 of section 57-38-01.2, a new subdivision to subsection 2 of section 57-38-30.3, a new subsection to section 57-39.2-04, and a new subsection to section 57-40.3-04 of the North Dakota Century Code, relating to income tax exemptions and sales, use, and motor vehicle excise tax exemptions for enrolled tribal members; and to provide an effective date.

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

<sup>250</sup> **SECTION 1.** A new subdivision to subsection 1 of section 57-38-01.2 of the North Dakota Century Code is created and enacted as follows:

Reduced by the amount of income of a taxpayer, who resides within the boundaries of any reservation in this state and who is an enrolled member of a federally recognized Indian tribe, from activities or sources within the boundaries of any reservation in this state.

<sup>251</sup> **SECTION 2.** A new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Reduced by the amount of income of a taxpayer, who resides within the boundaries of any reservation in this state and who is an enrolled member of a federally recognized Indian tribe, from activities or sources within the boundaries of any reservation in this state.

<sup>252</sup> **SECTION 3.** A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from sales within the boundaries of any reservation in this state to an individual who resides within the boundaries of any

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<sup>250</sup> Section 57-38-01.2 was also amended by section 43 of House Bill No. 1018, chapter 18, and section 2 of House Bill No. 1091, chapter 89.

<sup>251</sup> Section 57-38-30.3 was also amended by section 46 of House Bill No. 1018, chapter 18, section 3 of House Bill No. 1091, chapter 89, section 2 of House Bill No. 1403, chapter 519, section 1 of House Bill No. 1412, chapter 523, section 8 of Senate Bill No. 2032, chapter 520, section 1 of Senate Bill No. 2079, chapter 522, and section 2 of Senate Bill No. 2082, chapter 521.

<sup>252</sup> Section 57-39.2-04 was also amended by section 3 of House Bill No. 1049, chapter 529, and section 5 of Senate Bill No. 2380, chapter 528.



reservation in this state and who is an enrolled member of a federally recognized Indian tribe.

<sup>253</sup> **SECTION 4.** A new subsection to section 57-40.3-04 of the North Dakota Century Code is created and enacted as follows:

A motor vehicle acquired at any location within this state by an individual who resides within the boundaries of any reservation in this state and who is an enrolled member of a federally recognized Indian tribe.

**SECTION 5. EFFECTIVE DATE.** Sections 1 and 2 of this Act are effective for taxable years beginning after December 31, 2006. Sections 3 and 4 of this Act are effective for taxable events occurring after June 30, 2007.

Approved March 23, 2007  
Filed March 23, 2007

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<sup>253</sup> Section 57-40.3-04 was also amended by section 1 of House Bill No. 1160, chapter 534, section 7 of Senate Bill No. 2101, chapter 450, and section 3 of Senate Bill No. 2113, chapter 337.

**CHAPTER 514****HOUSE BILL NO. 1514**

(Representatives Monson, Nelson)  
(Senator Olafson)

**BIOMASS INCOME TAX CREDIT**

AN ACT to amend and reenact section 57-38-01.8 of the North Dakota Century Code, relating to an income tax credit for geothermal, solar, wind, or biomass energy devices; and to provide an effective date.

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

<sup>254</sup> **SECTION 1. AMENDMENT.** Section 57-38-01.8 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.8. Income tax credit for installation of geothermal, solar, ~~or~~ wind, or biomass energy devices.**

1. Any taxpayer filing a North Dakota income tax return pursuant to the provisions of this chapter may claim a credit for the cost of a geothermal, solar, ~~or~~ wind, or biomass energy device installed before January 1, 2011, in a building or on property owned or leased by the taxpayer in North Dakota. The credit provided in this section for a device installed before January 1, 2001, must be in an amount equal to five percent per year for three years, and for a device installed after December 31, 2000, must be in an amount equal to three percent per year for five years of the actual cost of acquisition and installation of the geothermal, solar, ~~or~~ wind, or biomass energy device and must be subtracted from any income tax liability of the taxpayer as determined pursuant to the provisions of this chapter.
2. For the purposes of this section:
  - a. "Biomass energy device" means a system using agricultural crops, wastes, or residues; wood or wood wastes or residues; animal wastes; landfill gas; or other biological sources to produce fuel or electricity.
  - b. "Geothermal energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, by a method which extracts or converts the energy naturally occurring beneath the earth's surface in rock structures, water, or steam.

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<sup>254</sup> Section 57-38-01.8 was also amended by section 1 of House Bill No. 1233, chapter 515, and section 1 of Senate Bill No. 2298, chapter 516.

- b. c. "Solar or wind energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, or to store any of these, by a method which converts the natural energy of the sun or wind.
3. If a geothermal, solar, ~~or wind,~~ or biomass energy device is a part of a system which uses other means of energy, only that portion of the total system directly attributable to the cost of the geothermal, solar, ~~or wind,~~ or biomass energy device may be included in determining the amount of the credit. The costs of installation may not include costs of redesigning, remodeling, or otherwise altering the structure of a building in which a geothermal, solar, ~~or wind,~~ or biomass energy device is installed.
  4. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity that installs a geothermal, solar, ~~or wind,~~ or biomass energy device in a building or on property owned or leased by the passthrough entity must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed with respect to the entity's investments must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.
  5. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all of the corporations included in the North Dakota consolidated return.
  6. The credit allowed under this section may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be used as a credit carryover to each of the five succeeding taxable years.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2006.

Approved March 9, 2007  
Filed March 12, 2007

**CHAPTER 515****HOUSE BILL NO. 1233**

(Representatives Brandenburg, Charging, S. Kelsh, Monson)  
(Senators Erbele, Wanzek)

**WIND ENERGY TAX CREDIT ASSIGNMENT**

AN ACT to amend and reenact section 57-38-01.8 of the North Dakota Century Code, relating to assignment of a wind energy device installation tax credit; and to provide an effective date.

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

<sup>255</sup> **SECTION 1. AMENDMENT.** Section 57-38-01.8 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.8. Income tax credit for installation of geothermal, solar, or wind energy devices.**

1. Any taxpayer filing a North Dakota income tax return pursuant to the provisions of this chapter may claim a credit for the cost of a geothermal, solar, or wind energy device installed before January 1, 2011, in a building or on property owned or leased by the taxpayer in North Dakota. The credit provided in this section for a device installed before January 1, 2001, must be in an amount equal to five percent per year for three years, and for a device installed after December 31, 2000, must be in an amount equal to three percent per year for five years of the actual cost of acquisition and installation of the geothermal, solar, or wind energy device and must be subtracted from any income tax liability of the taxpayer as determined pursuant to the provisions of this chapter.
2. For the purposes of this section:
  - a. "Geothermal energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, by a method which extracts or converts the energy naturally occurring beneath the earth's surface in rock structures, water, or steam.
  - b. "Solar or wind energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, or to store any of these, by a method which converts the natural energy of the sun or wind.

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<sup>255</sup> Section 57-38-01.8 was also amended by section 1 of House Bill No. 1514, chapter 514, and section 1 of Senate Bill No. 2298, chapter 516.

3. If a geothermal, solar, or wind energy device is a part of a system which uses other means of energy, only that portion of the total system directly attributable to the cost of the geothermal, solar, or wind energy device may be included in determining the amount of the credit. The costs of installation may not include costs of redesigning, remodeling, or otherwise altering the structure of a building in which a geothermal, solar, or wind energy device is installed.
4. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity that installs a geothermal, solar, or wind energy device in a building or on property owned or leased by the passthrough entity must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed with respect to the entity's investments must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.
5. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all of the corporations included in the North Dakota consolidated return.
6. The credit allowed under this section may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be used as a credit carryover to each of the five succeeding taxable years.
7. All or part of the unused credit allowed under this section may be sold, assigned, or otherwise transferred by the taxpayer to the purchaser of the power generated by the device as part of the consideration in a power purchase agreement, or to any North Dakota taxpayer that constructs or expands an electricity transmission line in North Dakota after August 1, 2007. The taxpayer receiving the assignment of the credit is entitled to claim the credit against that taxpayer's tax liability under this chapter beginning with the tax year in which the power purchase agreement or the tax credit purchase agreement was fully executed by the parties and the geothermal, solar, or wind energy device is installed. If the credit is transferred to an entity that constructs or expands transmission lines, the amount of credit claimed by that entity in any taxable year may not exceed the actual cost of acquisition and installation of the transmission lines constructed in North Dakota for that taxable year.
  - a. A purchaser of the tax credit must claim the credit beginning with the tax year in which the purchase agreement is fully executed by the parties and the geothermal, solar, or wind energy device is installed. A purchaser of a tax credit under this section has only the right to claim and use the credit under the terms that would have applied to the tax credit transferor, except that in the case of a credit that is sold, assigned, or otherwise transferred by the taxpayer to the tax credit transferor, the credit allowed under this section may not exceed sixty percent of the liability for tax of the tax credit purchaser under this chapter. This subsection does not limit

- the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.
- b. The tax credit transferor may sell the credit to only one tax credit purchaser each taxable year. The tax credit purchaser may not sell, assign, or otherwise transfer the credit purchased under the purchase agreement.
  - c. If the taxpayer elects to sell, assign, or otherwise transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser shall file jointly with the tax commissioner a copy of the purchase agreement affecting the tax credit transfer and a statement containing the name, address, and taxpayer identification number of any party to the transfer; the total installed cost of the qualifying geothermal, solar, or wind energy device; the amount of the credit being transferred; the gross proceeds received by the transferor; and the tax year for which the credit may be claimed. The purchase agreement must state clearly the purchase price associated with the tax credit sold. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and confidentiality waiver must be filed within thirty days after the date the purchase agreement is fully executed. The tax commissioner may audit the returns and assess or issue refunds, notwithstanding any other time limitation prescribed under law which may have expired for the purchaser.
  - d. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40.
  - e. The total amount of credits that can be sold by all taxpayers is limited to three million dollars each biennium. This limit applies on the basis of the date of installation of the geothermal, solar, or wind energy device.
  - f. Gross proceeds received under the purchase agreement by the tax credit transferor for the sale, assignment, or transfer of the tax credit must be allocated to North Dakota. The amount assigned under this subsection may not be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.
  - g. Within four years after the date of the credit assignment, the tax commissioner may audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and, if necessary, assess the credit purchaser if additional

tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.

- h. The tax commissioner may adopt rules to permit verification of the validity, timeliness, and limitations on the sale of the tax credit transferred under this section.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for geothermal, solar, or wind energy devices installed after December 31, 2006.

Approved April 27, 2007

Filed April 30, 2007

**CHAPTER 516****SENATE BILL NO. 2298**

(Senators Klein, Erbele, Grindberg)  
(Representatives Brandenburg, Headland, Pollert)

**ENERGY AND AGRICULTURAL PROCESSING  
FACILITY TAX CREDITS**

AN ACT to create and enact a new subsection to section 57-38-01.8 and a new subsection to section 57-40.2-03.3 of the North Dakota Century Code, relating to the income tax credit for installation of geothermal, solar, or wind energy devices, a use tax exemption for purchases of power plant production equipment and related tangible personal property, and machinery or equipment and related tangible personal property used to construct an agricultural commodity processing facility; and to amend and reenact sections 57-39.2-04.2, 57-39.2-04.4, and 57-40.2-04.2 of the North Dakota Century Code, relating to the definition of power plants, removal of obsolete language, and applications for exemption from sales tax for tangible personal property used to construct agricultural commodity processing facilities.

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

<sup>256</sup> **SECTION 1.** A new subsection to section 57-38-01.8 of the North Dakota Century Code is created and enacted as follows:

For geothermal, solar, or wind energy devices installed after December 31, 2006, if ownership of a device is transferred at the time installation is complete and the device is fully operational, the purchaser of the device is eligible for the tax credit under this section. Subsequent purchasers of the device are not eligible for the tax credit.

<sup>257</sup> **SECTION 2. AMENDMENT.** Section 57-39.2-04.2 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.2-04.2. (Effective through June 30, 2007) Reduced rate and exemption for power plant construction, production, environmental upgrade, and repowering equipment.**

1. As used in this section, unless the context otherwise requires:
  - a. "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in

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<sup>256</sup> Section 57-38-01.8 was also amended by section 1 of House Bill No. 1233, chapter 515, and section 1 of House Bill No. 1514, chapter 514.

<sup>257</sup> Section 57-39.2-04.2 was also amended by section 1 of House Bill No. 1365, chapter 530.



machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.

- b. "Operator" means any person owning, holding, or leasing a power plant.
  - c. "Power plant" means:
    - (1) An electrical generating plant, and all additions to the plant, which processes or converts lignite from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of one hundred twenty thousand kilowatts or more.
    - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.
  - d. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
  - e. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting lignite coal from its natural form into electrical power.
2. Sales of production or environmental upgrade equipment used exclusively in power plants or repowering existing power plants that begin construction after June 30, 1991, are exempt from the tax imposed by this chapter.
  3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to add environmental upgrades to existing power plants or repowering existing power plants are exempt from the tax imposed by this chapter.
  4. To receive the reduced rate or exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the reduced rate or exemption. If a certificate is not received prior to the purchase, the operator shall pay the applicable tax imposed by this chapter and apply to the commissioner for a refund.
  5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

**(Effective after June 30, 2007) Reduced rate and Sales tax exemption for power plant construction, production, environmental upgrade, and repowering equipment and oil refinery or gas processing plant environmental upgrade equipment.**

1. As used in this section, unless the context otherwise requires:
  - a.
    - (1) "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.
    - (2) "Environmental upgrade" for purposes of a process unit means an investment greater than one hundred thousand dollars in machinery, equipment, and related facilities for reducing emissions, increasing efficiency, or enhancing reliability of the equipment at a new or existing process unit.
  - b. "Operator" means any person owning, holding, or leasing a power plant or process unit.
  - c. "Power plant" means:
    - (1) An electrical generating plant, and all additions to the plant, which processes or converts lignite from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of ~~one hundred~~ twenty fifty thousand kilowatts or more.
    - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.
    - (3) Any other type of electrical power generating facility excluding the types of power plants identified in paragraphs 1 and 2 which has a capacity of one hundred kilowatts or more and produces electricity for resale or for consumption in a business activity.
  - d. "Process unit" means an oil refinery or gas processing plant and all adjacent units that are utilized in the processing of crude oil or natural gas.
  - e. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
  - f. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant

that modifies or replaces the process used for converting lignite coal from its natural form into electrical power.

2. Sales of production or environmental upgrade equipment used exclusively in power plants or repowering existing power plants or in processing units ~~that begin construction after June 30, 1994,~~ are exempt from the tax imposed by this chapter.
3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to add environmental upgrades to existing power plants or repowering existing power plants or to add environmental upgrades to existing process units are exempt from the tax imposed by this chapter.
4. To receive the ~~reduced rate or~~ exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the ~~reduced rate or~~ exemption. If a certificate is not received prior to the purchase, the operator shall pay the applicable tax imposed by this chapter and apply to the commissioner for a refund.
5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the ~~reduced rate or~~ exemption imposed or allowed by this section.

**SECTION 3. AMENDMENT.** Section 57-39.2-04.4 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.2-04.4. Sales tax exemption for materials used to construct agricultural commodity processing facility.**

1. Gross receipts from sales of tangible personal property used to construct an agricultural commodity processing facility in this state are exempt from taxes under this chapter. To be exempt, the tangible personal property must be incorporated in the structure of the facility or used in the construction process to the point of having no residual economic value.
2. ~~The~~ To receive the exemption at the time of purchase, the owner of the facility must apply to receive from the commissioner for a refund of sales and use taxes paid by any contractor, subcontractor, or builder for which the sale or use is claimed as exempt under this section. Application for a refund must be made at the times and in the manner directed by the commissioner and must include sufficient information to permit the commissioner to verify the sales and use taxes paid and the exempt status of the sale or use certificate that the tangible personal property used to construct an agricultural commodity processing facility which the owner intends to purchase qualifies for the exemption. If a certificate is not received prior to the purchase, the owner shall pay the applicable tax imposed by this chapter and apply to the commissioner for a refund.

3. If the tangible personal property is purchased or installed by a contractor subject to the tax imposed by this chapter, the owner may apply for a refund of the difference between the amount remitted by the contractor and the exemption imposed or allowed by this section.

~~3.~~ 4. For purposes of this section, the following definitions apply:

- a. "Agricultural commodity processing facility" means buildings, structures, fixtures, and improvements used or operated primarily for the processing or production of marketable products from agricultural commodities. The term does not include a facility that provides only storage, cleaning, drying, or transportation of agricultural commodities.
- b. "Facility" means each part of the facility which is used in a process primarily for the processing of agricultural commodities, including receiving or storing agricultural commodities; transporting the agricultural commodities or product before, during, or after the processing; or packaging or otherwise preparing the product for sale or shipment.
- c. "Tangible personal property" does not include tools or machinery used to construct an agricultural commodity processing facility and does not include machinery or equipment exempted under section 57-39.2-04.3.

**SECTION 4.** A new subsection to section 57-40.2-03.3 of the North Dakota Century Code is created and enacted as follows:

The tax imposed by this section does not apply to:

- a. Production equipment or tangible personal property as authorized or approved for exemption by the commissioner under section 57-39.2-04.2; or
- b. Machinery, equipment, or other tangible personal property used to construct an agricultural commodity processing facility as authorized or approved for exemption by the commissioner under section 57-39.2-04.3 or 57-39.2-04.4.

<sup>258</sup> **SECTION 5. AMENDMENT.** Section 57-40.2-04.2 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.2-04.2. (Effective through June 30, 2007) Reduced rate and exemption for power plant construction, production, environmental upgrade, and repowering equipment.**

1. As used in this section, unless the context otherwise requires:

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<sup>258</sup> Section 57-40.2-04.2 was also amended by section 2 of House Bill No. 1365, chapter 530.

- a. "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.
  - b. "Operator" means any person owning, holding, or leasing a power plant.
  - c. "Power plant" means:
    - (1) An electrical generating plant, and all additions to the plant, which processes or converts lignite from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of one hundred twenty thousand kilowatts or more.
    - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.
  - d. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
  - e. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting lignite coal from its natural form into electric power.
2. Sales of production or environmental upgrade equipment used exclusively in power plants or repowering existing power plants that begin construction after June 30, 1991, are exempt from the tax imposed by this chapter.
  3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to add environmental upgrades to existing power plants or repowering existing power plants are exempt from the tax imposed by this chapter.
  4. To receive the reduced rate or exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the reduced rate or exemption. If a certificate is not received prior to the purchase, the operator shall pay the applicable tax imposed by this chapter and apply to the commissioner for a refund.
  5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the

amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

**(Effective after June 30, 2007) ~~Reduced rate~~ Use tax and exemption for power plant construction, production, environmental upgrade, and repowering equipment and oil refinery or gas processing plant environmental upgrade equipment.**

1. As used in this section, unless the context otherwise requires:
  - a.
    - (1) "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.
    - (2) "Environmental upgrade" for purposes of a process unit means an investment greater than one hundred thousand dollars in machinery, equipment, and related facilities for reducing emissions, increasing efficiency, or enhancing reliability of the equipment at a new or existing process unit.
  - b. "Operator" means any person owning, holding, or leasing a power plant or process unit.
  - c. "Power plant" means:
    - (1) An electrical generating plant, and all additions to the plant, which processes or converts lignite from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of ~~one hundred~~ twenty fifty thousand kilowatts or more.
    - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.
    - (3) Any other type of electrical power generating facility excluding the types of power plants identified in paragraphs 1 and 2 which has a capacity of one hundred kilowatts or more and produces electricity for resale or for consumption in a business activity.
  - d. "Process unit" means an oil refinery or gas processing plant and all adjacent units that are utilized in the processing of crude oil or natural gas.
  - e. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.

- f. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting lignite coal from its natural form into electric power.
2. Sales of production or environmental upgrade equipment used exclusively in power plants or repowering existing power plants or in process units that begin construction after June 30, 1991, are exempt from the tax imposed by this chapter.
3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to add environmental upgrades to existing power plants or repowering existing power plants or to add environmental upgrades to existing process units are exempt from the tax imposed by this chapter.
4. To receive the ~~reduced rate or~~ exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the reduced rate or exemption. If a certificate is not received prior to the purchase, the operator shall pay the applicable tax imposed by this chapter and apply to the commissioner for a refund.
5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

Approved April 9, 2007

Filed April 10, 2007

**CHAPTER 517****SENATE BILL NO. 2078**

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

**FAMILY CARE INCOME TAX CREDIT**

AN ACT to amend and reenact section 57-38-01.20 of the North Dakota Century Code, relating to the family care income tax credit; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-38-01.20 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.20. Credit for expenses of caring for certain family members.**

1. An individual is entitled to a credit against the tax imposed under section 57-38-29 or 57-38-30.3 in the amount of qualified care expenses under this section paid by the individual for the care of a qualifying family member during the taxable year.
2. A qualifying family member is an individual who has taxable income of twenty thousand dollars or less or a married individual with taxable income of thirty-five thousand dollars or less, including that of the individual's spouse, for the taxable year. A qualifying family member must be related to the taxpayer by blood or marriage and either sixty-five years of age or older or ~~determined to be~~ is disabled by the ~~social security administration~~ as defined under title XVI of the federal Social Security Act.
3. a. Qualified care expenses include payments by the taxpayer for home health agency services, companionship services, personal care attendant services, homemaker services, adult day care, respite care, ~~health care equipment and supplies,~~ and other expenses for goods or services that are necessary to allow the ~~qualifying family member to avoid placement in a long-term care facility and which are~~ that are deductible medical expenses under the Internal Revenue Code. A qualified care expense must be:
  - (1) Provided to or for the benefit of the qualifying family member or to assist the taxpayer in caring for the qualifying family member;
  - (2) Provided by an organization or individual not related to the taxpayer or the qualifying family member; and
  - (3) Not compensated for by insurance or federal or state assistance programs.
- b. For purposes of this subsection, "companionship services" means services that provide fellowship, care, and protection for individuals



who, because of advanced age or physical or mental disabilities, cannot care for their own needs. Those services may include household work related to the care of the aged or disabled person, including meal preparation, bed making, washing of clothes, and other similar services, and may include the performance of general household work if that work does not exceed twenty percent of the total weekly hours worked. "Companionship services" does not include services relating to the care and protection of the aged or disabled which require and are performed by trained personnel, including a registered or practical nurse, and does not include services of individuals who provide care and protection for infants and young children who are not physically or mentally disabled.

4. The percentage amount of credit allowable under this section is:
  - a. For a taxpayer whose taxable income does not exceed twenty-five thousand dollars, or thirty-five thousand dollars for a joint return, thirty percent of qualified elderly care expenses; or
  - b. For a taxpayer whose taxable income exceeds twenty-five thousand dollars, or thirty-five thousand dollars for a joint return, the greater of:
    - (1) Twenty percent of qualified elderly care expenses; or
    - (2) Thirty percent of qualified elderly care expenses, minus one percent of those expenses for each two thousand dollars or fraction of two thousand dollars by which the taxable income of the taxpayer for the taxable year exceeds twenty-five thousand dollars, or thirty-five thousand dollars for a joint return.
5. The dollar amount of credit allowable under this section is:
  - a. Reduced by one dollar for each dollar of the taxable income over fifty thousand dollars for a taxpayer whose taxable income exceeds fifty thousand dollars, or for a joint return, reduced by one dollar for each dollar of the taxable income over seventy thousand dollars for taxpayers whose taxable income exceeds seventy thousand dollars; and
  - b. Limited to two thousand dollars per qualifying family member in a taxable year and to four thousand dollars total for two or more qualifying family members in a taxable year; ~~and~~
  - e. ~~Prorated among multiple taxpayers who each contribute to qualified care expenses of the same qualified family member in a taxable year in the same proportion that their contributions bear to the total qualified care expenses paid by those taxpayers for that qualified family member. To the extent necessary to administer proration under this subdivision, the secrecy provisions of section 57-38-57 do not apply to disclosures necessary to advise taxpayers of how proration should have been computed.~~
6. A deduction or credit is not allowed under any other provision of this chapter with respect to any amount for which a credit is allowed under

this section. The credit allowed under this section may not be claimed as a carryback or carryforward and may not be refunded if the taxpayer has no tax liability.

7. In the case of a married individual filing a separate return, the percentage amount of credit under subsection 4 and the dollar amount of credit under subsection 5 are limited to one-half of the amounts indicated in those subsections.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2006.

Approved March 7, 2007

Filed March 8, 2007

**CHAPTER 518****SENATE BILL NO. 2363**

(Senators Horne, Flakoll, Mathern)  
(Representatives N. Johnson, Kaldor, Kretschmar)

**ENDOWMENT GIFTS INCOME TAX CREDIT**

AN ACT to amend and reenact section 57-38-01.21 of the North Dakota Century Code, relating to an individual or corporate income tax credit for planned gifts to nonprofit organizations and contributions to qualified endowments held by nonprofit organizations; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-38-01.21 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.21. Planned gifts and qualified endowments credit - Definitions.** For purposes of this section:

1. For purposes of this section:

- a. "Permanent, irrevocable fund" means a fund comprising cash, securities, mutual funds, or other investment assets established for a specific charitable, religious, educational, or eleemosynary purpose and invested for the production or growth of income, or both, which may either be added to principal or expended.
- b. "Planned gift" means an irrevocable contribution to a North Dakota qualified nonprofit organization or qualified endowment held by or for a North Dakota qualified nonprofit organization, when the contribution uses any of the following techniques that are authorized under the Internal Revenue Code:
  - (1) Charitable remainder unitrusts, as defined by 26 U.S.C. 664;
  - (2) Charitable remainder annuity trusts, as defined by 26 U.S.C. 664;
  - (3) Pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);
  - (4) Charitable lead unitrusts qualifying under 26 U.S.C. 170(f)(2)(B);
  - (5) Charitable lead annuity trusts qualifying under 26 U.S.C. 170(f)(2)(B);
  - (6) Charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);
  - (7) Deferred charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

- (8) Charitable life estate agreements qualifying under 26 U.S.C. 170(f)(3)(B); or
- (9) Paid-up life insurance policies meeting the requirements of 26 U.S.C. 170.

"Planned gift" does not include a contribution using a charitable remainder unitrust or charitable remainder annuity trust unless the agreement provides that the trust may not terminate and beneficiaries' interest in the trust may not be assigned or contributed to the qualified endowment sooner than the earlier of the date of death of the beneficiaries or five years from the date of the contribution.

"Planned gift" does not include a deferred charitable gift annuity unless the payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables used by the internal revenue service in determining federal charitable income tax deductions on the date of the contribution.

"Planned gift" does not include a charitable gift annuity or deferred charitable gift annuity unless the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity may not be assigned to the qualified nonprofit organization or qualified endowment sooner than the earlier of the date of death of the annuitant or annuitants or five years after the date of the contribution.

"Planned gift" does not include a charitable gift annuity or deferred charitable gift annuity unless the annuity is a qualified charitable gift annuity for federal income tax purposes.

b. c. "Qualified nonprofit organization endowment" means a permanent, irrevocable fund held by a North Dakota incorporated or established organization that is:

- (1) A tax-exempt organization under 26 U.S.C. 501(c), to which contributions qualify for a federal charitable income tax deduction; and qualified nonprofit organization; or
- (2) An organization that has an established business presence or situs in North Dakota. A bank or trust company holding the fund on behalf of a qualified nonprofit organization.

e. (1) A contribution using a technique described in paragraph 4 or 2 of subdivision a is not a planned gift unless the trust agreement provides that the trust may not terminate and the beneficiaries' interest in the trust may not be assigned or contributed to the North Dakota qualified nonprofit organization sooner than the earlier of:

- (a) The date of death of the beneficiaries; or
- (b) Five years from the date of the contribution.

- (2) A contribution using the technique described in paragraph 7 of subdivision a is not a planned gift unless the payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables used by the internal revenue service in determining federal charitable income tax deductions on the date of the contribution.
  - (3) A contribution using a technique described in paragraph 6 or 7 of subdivision a is not a planned gift unless the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity may not be assigned to the North Dakota qualified nonprofit organization sooner than the earlier of:
    - (a) The date of death of the annuitant or annuitants; or
    - (b) Five years after the date of the contribution.
  - (4) A contribution using a technique described in paragraph 6 or 7 of subdivision a is not a planned gift unless the annuity is a qualified charitable gift annuity.
- d. "Qualified nonprofit organization" means a North Dakota incorporated or established tax-exempt organization under 26 U.S.C. 501(c) to which contributions qualify for federal charitable income tax deductions with an established business presence or situs in North Dakota.
2. An individual taxpayer is allowed a tax credit against the taxes tax imposed by section 57-38-29 or 57-38-30.3 in an amount equal to ~~twenty~~ forty percent of the present value of the aggregate amount of the charitable gift portion of planned gifts made by the taxpayer during the year to ~~any North Dakota a~~ qualified nonprofit organization or qualified endowment. The maximum credit that may be claimed by a taxpayer under this subsection for contributions made ~~from all sources~~ in a taxable year is ~~five ten thousand dollars, or twenty thousand dollars for married individuals filing a joint return~~. The credit allowed under this section may not exceed the taxpayer's income tax liability.
- a. ~~If this credit is claimed, the amount of the contribution upon which the credit is computed must be added to federal taxable income in computing North Dakota taxable income, but only to the extent that the contribution reduced federal taxable income.~~
  - b. ~~The credit must be applied to the tax year in which the contribution is made and any unused portion of the credit may be carried forward for up to two taxable years.~~
3. A corporation is allowed a tax credit against the tax imposed by section 57-38-30 in an amount equal to forty percent of a charitable gift to a qualified endowment. The maximum credit that may be claimed by a corporation under this subsection for contributions made in a taxable year is ten thousand dollars. The credit allowed under this section may not exceed the corporate taxpayer's income tax liability.

4. An estate or trust is allowed a tax credit in an amount equal to forty percent of a charitable gift to a qualified endowment. The maximum credit allowed under this subsection for contributions made in a taxable year is ten thousand dollars. The allowable credit must be apportioned to the estate or trust and to its beneficiaries on the basis of the income of the estate or trust allocable to each, and the beneficiaries may claim their share of the credit against the tax imposed by section 57-38-29, 57-38-30, or 57-38-30.3. A beneficiary may claim the credit only in the beneficiary's taxable year in which the taxable year of the estate or trust ends. Subsections 6 and 7 apply to the estate or trust and its beneficiaries with respect to their respective shares of the apportioned credit.
5. A partnership, subchapter S corporation, or limited liability company treated like a partnership is entitled to a credit in an amount equal to forty percent of a charitable gift to a qualified endowment by the entity during the taxable year. The maximum credit allowed to the entity under this subsection for charitable gifts and planned gifts made in a taxable year is ten thousand dollars. The credit determined at the entity level must be passed through to the partners, shareholders, or members in the same proportion that the charitable contributions attributable to the charitable gifts and planned gifts under this section are distributed to the partners, shareholders, or members. The partner, shareholder, or member may claim the credit only in the partner's, shareholder's, or member's taxable year in which the taxable year of the partnership, subchapter S corporation, or limited liability company ends. Subsections 6 and 7 apply to the partner, shareholder, or member.
6. The amount of the contribution upon which an allowable credit is computed must be added to federal taxable income in computing North Dakota taxable income in the taxable year in which the credit is first claimed, but only to the extent that the contribution reduced federal taxable income.
7. An unused credit may be carried forward for up to three taxable years.
8. If a contribution for which a credit was claimed is recovered by the taxpayer, an amount equal to the credit claimed in all taxable years must be added to the tax due on the income tax return filed for the taxable year in which the recovery occurs. For purposes of subsection 4, this subsection applies if the estate or trust recovers the contribution and the estate or trust and its beneficiaries are liable for the additional tax due with respect to their respective shares of the apportioned credit. For purposes of subsection 5, this subsection applies if the partnership, subchapter S corporation, or limited liability company recovers the contribution, and the partner, shareholder, or member is liable for the additional tax due.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2006.

Approved April 17, 2007  
Filed April 18, 2007

**CHAPTER 519****HOUSE BILL NO. 1403**

(Representatives Onstad, DeKrey, D. Johnson, Weisz)  
(Senators Klein, Taylor)

**MICROBUSINESS INCOME TAX CREDIT**

AN ACT to create and enact a new section to chapter 57-38 and a new subsection to section 57-38-30.3 of the North Dakota Century Code, relating to an individual and corporate income tax credit for operation of a microbusiness; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

**Microbusiness income tax credit.****1. For purposes of this section:**

- a. "Actively engaged" in the operation of a microbusiness means involvement on a continuous basis in the daily management and operation of the business.
- b. "Director" means the director of the department of commerce division of economic development and finance.
- c. "Economically viable small community" means a community with a population of at least one hundred but fewer than two thousand, which has one or more of the following:
  - (1) An active community economic development organization;
  - (2) An ongoing relationship with a regional or urban economic development organization; or
  - (3) An existing city sales tax, all or part of the revenue from which is dedicated to economic development.
- d. "Microbusiness" means a business employing five or fewer employees inside an economically viable small community.
- e. "New employment" means the amount by which the total compensation paid during the taxable year to North Dakota resident employees exceeds the total compensation paid to North Dakota resident employees in the taxable year before the application. For the purposes of calculating the increase in new employment, the employer may not include merit or equity based salary increases, cost of living adjustments, or any other increase in compensation not directly related to the hiring of new employees during the taxable year.

- f. "New investment" means the increase in the applicant's purchases of microbusiness buildings and depreciable personal property located in this state, not including vehicles required to be registered for operation on the roads and highways of this state, during the taxable year as compared with the previous taxable year. If the buildings or depreciable personal property is leased, the amount of new investment is the increase in average net annual rents multiplied by the number of years of the lease for which the taxpayer is bound, not exceeding ten years. For the purposes of calculating the increase in new investment, the employer may not include any increases in rents for property leased before the current taxable year. Only rents for leases completed in the current taxable year may be included.
2. The director shall accept an application for qualification as a microbusiness under this section from a taxpayer that is actively engaged in the operation of a microbusiness or that will establish a microbusiness in which the taxpayer will be actively engaged in or operating within the current or subsequent taxable year. The application must be on a form provided by the director and must contain:
    - a. A description of the microbusiness;
    - b. The projected income and expenditures of the microbusiness;
    - c. The market to be served by the microbusiness and the way the expansion addressed the market;
    - d. The amount of projected new investment or employment increases;
    - e. The projected improvement in income or creation of new self-employment or jobs in the area in which the microbusiness is located;
    - f. The nature of the applicant's engagement in the operation of the microbusiness; and
    - g. Any other document, plan, or specification required by the director.
  3. A business may be certified by the director as a microbusiness if:
    - a. The applicant is actively engaged in the operation of the microbusiness or will be actively engaged in the operation of the microbusiness upon its establishment;
    - b. The applicant will make new investment or employment in the microbusiness;
    - c. The new investment or employment will create new income or jobs in the area in which the business is located;
    - d. The new business will not directly compete with any established business located within fifteen miles of the proposed new business;



- e. The new business will be located in an area determined by the director to be an economically viable small community located at least fifteen miles from the city limits of a city with a population of two thousand or more; and
  - f. The applicant is not closing or reducing its business operation in one area of the state and relocating substantially the same business operation in another area.
4. If the applicant meets the requirements of subsection 3, the director shall issue a certification letter to the microbusiness. The certification letter must include the certification effective date.
  5. The director may not certify more than two hundred qualified businesses as a microbusiness.
  6. A taxpayer that is certified as a microbusiness is entitled to tax credits against tax liability as determined under section 57-38-29, 57-38-30, or 57-38-30.3 equal to twenty percent of the taxpayer's new investment and new employment in the microbusiness during the taxable year. A taxpayer may not obtain more than ten thousand dollars in credits under this section over any combination of taxable years.
  7. The credit under this section may not exceed a taxpayer's liability as determined under this chapter for the taxable year. Each year's unused credit amount may be carried forward for up to five taxable years.
  8. The taxpayer only may claim the tax credit under this section by filing a form provided by the tax commissioner and attaching the microbusiness certification letter.
  9. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.
  10. The tax commissioner shall prepare a report for the director identifying the following aggregate amounts for the previous calendar year:
    - a. The actual amount of new investment and new employment in the previous calendar year which was reported by taxpayers certified as a microbusiness under this section; and
    - b. The tax credit claimed during the previous calendar year.
  11. The report required by subsection 10 must be issued by January 1, 2009, and each January fifteenth thereafter. Information may not be included in the report which is protected by the state or federal confidentiality laws.

<sup>259</sup> **SECTION 2.** A new subsection to section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

A taxpayer filing a return under this section is entitled to the microbusiness income tax credit provided under section 1 of this Act.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2006.

Approved April 17, 2007  
Filed April 18, 2007

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<sup>259</sup> Section 57-38-30.3 was also amended by section 46 of House Bill No. 1018, chapter 18, section 3 of House Bill No. 1091, chapter 89, section 2 of House Bill No. 1393, chapter 513, section 1 of House Bill No. 1412, chapter 523, section 8 of Senate Bill No. 2032, chapter 520, section 1 of Senate Bill No. 2079, chapter 522, and section 2 of Senate Bill No. 2082, chapter 521.

**CHAPTER 520****SENATE BILL NO. 2032**

(Legislative Council)  
(Finance and Taxation Committee)

**PROPERTY TAX RELIEF**

AN ACT to create and enact three new sections to chapter 57-38 and three new subsections to section 57-38-30.3 of the North Dakota Century Code, relating to income tax marriage penalty relief, a homestead income tax credit, and a commercial property income tax credit; to amend and reenact sections 57-02-08.1, 57-12-09, 57-15-14, 57-20-07.1, and 57-55-04 of the North Dakota Century Code, relating to the homestead credit, notice of assessment increases, school district levy limitations, contents of property tax statements, payment of real estate taxes, and mobile home taxes; to provide an appropriation; to provide for a transfer; to provide for a legislative council study; and to provide an effective date.

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

<sup>260</sup> **SECTION 1. AMENDMENT.** Section 57-02-08.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-02-08.1. Homestead credit.**

1. a. Any person sixty-five years of age or older or permanently and totally disabled, in the year in which the tax was levied, with an income that does not exceed the limitations of subdivision c is entitled to receive a reduction in the assessment on the taxable valuation on the person's homestead. An exemption under this subsection applies regardless of whether the person is the head of a family.
- b. The exemption under this subsection continues to apply if the person does not reside in the homestead and the person's absence is due to confinement in a nursing home, hospital, or other care facility, for as long as the portion of the homestead previously occupied by the person is not rented to another person.
- c. The exemption must be determined according to the following schedule:
  - (1) If the person's income is not in excess of ~~eight ten thousand five hundred~~ eight ten thousand dollars, a reduction of one hundred percent of the taxable valuation of the person's homestead up to a maximum reduction of three thousand ~~thirty-eight~~ three hundred seventy-five dollars of taxable valuation.

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<sup>260</sup> Section 57-02-08.1 was also amended by section 1 of Senate Bill No. 2088, chapter 500.

- (2) If the person's income is in excess of ~~eight ten~~ eighteen thousand ~~five hundred~~ dollars and not in excess of ~~ten twelve~~ twenty thousand dollars, a reduction of eighty percent of the taxable valuation of the person's homestead up to a maximum reduction of two thousand ~~four seven~~ eight hundred ~~thirty~~ dollars of taxable valuation.
  - (3) If the person's income is in excess of ~~ten twelve~~ twenty thousand dollars and not in excess of ~~eleven fourteen~~ thirty 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 two~~ eight hundred ~~eight hundred twenty-three~~ twenty-five dollars of taxable valuation.
  - (4) If the person's income is in excess of ~~eleven fourteen~~ thirty thousand ~~five hundred~~ dollars and not in excess of ~~thirteen~~ thirty ~~sixteen~~ thousand dollars, a reduction of forty percent of the taxable valuation of the person's homestead up to a maximum reduction of one thousand ~~two three~~ eight hundred ~~fifteen fifty~~ dollars of taxable valuation.
  - (5) If the person's income is in excess of ~~thirteen sixteen~~ thirty thousand dollars and not in excess of ~~fourteen seventeen~~ thirty thousand ~~five hundred~~ dollars, a reduction of twenty percent of the taxable valuation of the person's homestead up to a maximum reduction of six hundred ~~eight seventy-five~~ eight hundred dollars of taxable valuation.
- d. Persons residing together, as spouses or when one or more is a dependent of another, are entitled to only one exemption between or among them under this subsection. Persons residing together, who are not spouses or dependents, who are coowners of the property are each entitled to a percentage of a full exemption under this subsection equal to their ownership interests in the property.
  - e. This subsection does not reduce the liability of any person for special assessments levied upon any property.
  - f. Any person claiming the exemption under this subsection shall sign a verified statement of facts establishing the person's eligibility.
  - g. A person is ineligible for the exemption under this subsection if the value of the assets of the person and any dependent residing with the person, excluding the unencumbered value of the person's residence that the person claims as a homestead, exceeds fifty thousand dollars, including the value of any assets divested within the last three years. For purposes of this subdivision, the unencumbered valuation of the homestead is limited to one hundred thousand dollars.
  - h. The assessor shall attach the statement filed under subdivision f to the assessment sheet and shall show the reduction on the assessment sheet.

- i. An exemption under this subsection terminates at the end of the taxable year of the death of the applicant.
  2.
    - a. Any person who would qualify for an exemption under subdivisions a and c of subsection 1 except for the fact that the person rents living quarters is eligible for refund of a portion of the person's annual rent deemed by this subsection to constitute the payment of property tax.
    - b. 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 expressly set out in the rental agreement, must be considered as payment made for property tax. When any part of the twenty percent of the annual rent exceeds four percent of the annual income of a qualified applicant, the applicant is entitled to receive a refund from the state general fund for that amount in excess of four percent of the person's annual income, but the refund may not be in excess of two hundred forty dollars. If the calculation for the refund is less than five dollars, a minimum of five dollars must be sent to the qualifying applicant.
    - c. Persons who reside together, as spouses or when one or more is a dependent of another, are entitled to only one refund between or among them under this subsection. Persons who reside together in a rental unit, who are not spouses or dependents, are each entitled to apply for a refund based on the rent paid by that person.
    - d. Each application for refund under this subsection must be made to the tax commissioner before the first day of June of each year by the person claiming the refund. The tax commissioner may grant an extension of time to file an application for good cause. The tax commissioner shall issue refunds to applicants.
    - e. This subsection does not apply to rents or fees paid by a person for any living quarters, including a nursing home licensed pursuant to section 23-16-01, if those living quarters are exempt from property taxation and the owner is not making a payment in lieu of property taxes.
    - f. A person may not receive a refund under this section for a taxable year in which that person received an exemption under subsection 1.
3. All forms necessary to effectuate this section must be prescribed, designed, and made available by the tax commissioner. The county directors of tax equalization shall make these forms available upon request.
4. A person whose homestead is a farm structure exempt from taxation under subsection 15 of section 57-02-08 may not receive any property tax credit under this section.
5. For the purposes of this section:

- a. "Dependent" has the same meaning it has for federal income tax purposes.
- b. "Homestead" has the same meaning as provided in section 47-18-01.
- c. "Income" means income for the most recent complete taxable year from all sources, including the income of any dependent of the applicant, and including any county, state, or federal public assistance benefits, social security, or other retirement benefits, but excluding any federal rent subsidy, any amount excluded from income by federal or state law, and medical expenses paid during the year by the applicant or the applicant's dependent which is not compensated by insurance or other means.
- d. "Medical expenses" has the same meaning as it has for state income tax purposes, except that for transportation for medical care the person may use the standard mileage rate allowed for state officer and employee use of a motor vehicle under section 54-06-09.
- e. "Permanently and totally disabled" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months as established by a certificate from a licensed physician.

**SECTION 2. AMENDMENT.** Section 57-12-09 of the North Dakota Century Code is amended and reenacted as follows:

**57-12-09. ~~Written notice~~ Notice of increased assessment to real estate owner.** When any assessor has increased the true and full valuation of any lot or tract of land ~~together with~~ or any improvements thereon ~~by fifteen percent or more to more than ten percent more than the amount~~ of the last assessment, ~~written~~ notice of the amount of increase over the last assessment and the amount of the last assessment must be delivered in writing by the assessor to the property owner ~~or,~~ mailed in writing to the property owner at the property owner's last-known address ~~except that no notice need be delivered or mailed if the true and full valuation is increased by less than three thousand dollars, or provided to the property owner by electronic mail directed with verification of receipt to an electronic mail address at which the property owner has consented to receive notice. Delivery of notice to a property owner under this section must be completed not fewer than fifteen days before the meeting of the local equalization board.~~ The tax commissioner shall prescribe suitable forms for this notice and the notice must show the true and full value as defined by law of the property, including improvements, that the assessor used in making the assessment for the current year and for the year in which the last assessment was made and must also show the date prescribed by law for the meeting of the local equalization board of the assessment district in which the property is located and the meeting date of the county equalization board. The notice must be mailed or delivered ~~to the property owner at least ten days in advance of the meeting date of the local equalization board and must be mailed or delivered~~ at the expense of the assessment district for which the assessor is employed.

<sup>261</sup> **SECTION 3. AMENDMENT.** Section 57-15-14 of the North Dakota Century Code is amended and reenacted as follows:

**57-15-14. Tax General fund levy limitations in school districts.** The aggregate amount levied each year for the purposes listed in section 57-15-14.2 by any school district, except the Fargo school district, may 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 one hundred eighty-five 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 is 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, 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.
3. After June 30, 2007, in any school district election for approval by electors of unlimited or increased levy authority under subsection 1 or 2, the ballot must specify the number of mills, the percentage increase in dollars levied, or that unlimited levy authority is proposed for approval, and the number of taxable years for which that approval is to apply. After June 30, 2007, approval by electors of unlimited or increased levy authority under subsection 1 or 2 may not be effective for more than ten taxable years.
4. 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 aid payments provided in chapter 15.1-27 because of the deduction required in section 15.1-27-05, 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 one hundred eighty-five 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

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<sup>261</sup> Section 57-15-14 was also amended by section 47 of Senate Bill No. 2200, chapter 163.

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 section 15.1-27-05 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 must be submitted to the 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 ten~~ ten 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 is required~~ electors who cast votes in the most recent election in the school district. However, not fewer than twenty-five signatures are 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 number of qualified electors in the district must be determined by the county superintendent for such county in which such school is located. However, the approval of discontinuing either such authority does not affect the tax levy in the calendar year in which the election is held. The election must 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 4. AMENDMENT.** Section 57-20-07.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-20-07.1. County treasurer to mail real estate tax statement.** On or before December twenty-sixth of each year, the county treasurer shall mail a real estate tax statement to the owner of each parcel of real property at the owner's last-known address. The statement must be provided in a manner that allows the taxpayer to retain a printed record of the obligation for payment of taxes and special assessments as provided in the statement. If a parcel of real property is owned by more than one individual, the county treasurer shall send only one statement to one of the owners of that property. Additional copies of the tax statement will be sent to the other owners upon their request and the furnishing of their names and addresses to the county treasurer. ~~Such tax statements~~ The tax statement must include a dollar valuation of the true and full value as defined by law of the property and the total mill levy applicable. The tax statement must include, or be accompanied by a separate sheet, with three columns showing, for the taxable year to which the tax statement applies and the two immediately preceding taxable years, the property tax levy in dollars against the parcel by the county and school district and any city or township that levied taxes against the parcel. Failure of an owner to receive a statement will not relieve that owner of liability, nor extend the discount privilege past the February fifteenth deadline.

**SECTION 5.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

**Marriage penalty credit.**

1. A married couple filing a joint return under section 57-38-30.3 is allowed a credit of not to exceed three hundred dollars per couple as determined under this section. The tax commissioner shall adjust the maximum amount of the credit under this subsection each taxable year at the time



and rate adjustments are made to rate schedules under subdivision g of subsection 1 of section 57-38-30.3.

2. The credit under this section is the difference between the tax on the couple's joint North Dakota taxable income under the rates and income levels in subdivision b of subsection 1 of section 57-38-30.3 and the sum of the tax under the rates and income levels of subdivision a of subsection 1 of section 57-38-30.3 on the earned income of the lesser-earning spouse, and the tax under the rates and income levels of subdivision a of subsection 1 of section 57-38-30.3 on the couple's joint North Dakota taxable income, minus the earned income of the lesser-earning spouse.
3. The tax commissioner shall prepare and make available to taxpayers a comprehensive table showing the credit under this section at brackets of earnings of the lesser-earning spouse and joint taxable income. The brackets of earnings may not be more than two thousand dollars.
4. For a nonresident or part-year resident, the credit under this section must be adjusted based on the percentage calculated under subdivision f of subsection 1 of section 57-38-30.3.
5. For purposes of this section:
  - a. "Earned income" means the sum of the following, to the extent included in North Dakota taxable income:
    - (1) Earned income as defined in section 32(c)(2) of the Internal Revenue Code;
    - (2) Income received from a retirement pension, profit-sharing, stock bonus, or annuity plan; and
    - (3) Social security benefits as defined in section 86(d)(1) of the Internal Revenue Code.
  - b. "Earned income of the lesser-earning spouse" means the earned income of the spouse with the lesser amount of earned income for the taxable year minus the sum of:
    - (1) The amount for one exemption under section 151(d) of the Internal Revenue Code; and
    - (2) One-half of the amount of the standard deduction under section 63(c)(2)(A)(4) of the Internal Revenue Code.

**SECTION 6.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

**Homestead income tax credit - Rules.**

1. In addition to any other credit or deduction allowed by law for a homeowner, an individual is entitled to a credit against the tax imposed under section 57-38-29 or section 57-38-30.3 for taxable years 2007 and 2008 in the amount of ten percent of property taxes or mobile home taxes that became due during the income tax taxable year and are paid

which were levied against the individual's homestead in this state. For purposes of this section, "property taxes" does not include any special assessments.

2. For purposes of this section, "homestead" means the dwelling occupied by the individual as the individual's primary residence and, if that residence is in this state, any residential or agricultural property owned by that individual in this state.
3. a. The amount of the credit under this section may not exceed one thousand dollars for married persons filing a joint return or five hundred dollars for a single individual or married individuals filing separate returns.
  - b. The amount of the credit under this section may not exceed the taxpayer's tax liability under this chapter.
4. The amount of the credit under subsection 3 in excess of the taxpayer's tax liability may be carried forward for up to five years or the taxpayer may request that the tax commissioner issue the taxpayer a certificate in the amount of the excess which may be used by the taxpayer against property or mobile home tax liability of the taxpayer during the ensuing taxable year by delivering the certificate to the county treasurer in which the taxable property or mobile home is subject to taxes. The county treasurer shall forward certificates redeemed in payment of a tax obligation under this section to the tax commissioner, who shall issue payment to the county in the amount of the certificates.
5. Persons owning property together are entitled to only one credit for a parcel of property between or among them under this section. Persons owning property together are each entitled to a percentage of the credit for a single individual under this section equal to their ownership interests in the property.
6. This section is not subject to subsection 1 or subsection 2 of section 57-38-45.
7. The tax commissioner shall adopt rules to provide for filing and verification of claims of credits under this section and for issuance and redemption of tax certificates under subsection 4.
8. a. If, on November 15, 2008, the total amount of tax credits claimed under this section exceeds forty-seven million dollars, the tax commissioner shall reduce the rate of the credit under subsection 1. The adjusted credit rate must be calculated by the tax commissioner as follows:
  - (1) The tax commissioner shall determine the percentage by which the credits claimed under this section exceeds forty-seven million dollars.
  - (2) The difference between the number one and the amount calculated under subdivision a multiplied by ten percent is the adjusted credit rate for the 2008 taxable year.

- b. The tax commissioner shall report any adjustment under this subsection to the budget section of the legislative council for review.

**SECTION 7.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

**Commercial property income tax credit - Rules.**

1. In addition to any other credit or deduction allowed by law for a property owner, an individual or corporation is entitled to a credit against the tax imposed under sections 57-38-29, 57-39-30, or 57-38-30.3 for taxable years 2007 and 2008 in the amount of ten percent of property taxes or mobile home taxes that became due during the income tax taxable year and are paid which were levied against commercial property in this state. For purposes of this section, "property taxes" does not include any special assessments.
  - a. The amount of the credit under this section may not exceed one thousand dollars for any taxpayer.
  - b. The amount of the credit under this section may not exceed the taxpayer's tax liability under this chapter.
  - c. The amount of the credit under this section may not exceed one thousand dollars for married persons filing a joint return or five hundred dollars for a single individual or married individual filing separate returns.
2. The amount of the credit under subdivisions a and c of subsection 1 in excess of the taxpayer's tax liability may be carried forward for up to five years.
3. Persons owning property together are entitled to only one credit property between or among them under this section. Persons owning property together are each entitled to a percentage of the credit equal to their ownership interests in the property. Married individuals owning property together are each entitled to a percentage of the credit for a single individual under this section equal to their ownership interests in the property.
4. This section is not subject to subsection 1 or subsection 2 of section 57-38-45.
5. A passthrough entity entitled to the credit under this section shall allocate the amount of the credit allowed with respect to the entity's property at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.
6. The tax commissioner shall adopt rules to provide for filing and verification of claims under this section.
7. a. If, on November 15, 2008, the total amount of credits claimed under this section exceeds seven million dollars, the tax

commissioner shall reduce the cap that applies to the credit under subsection 1. The adjusted credit cap must be calculated by the tax commissioner as follows:

- (1) The tax commissioner shall determine the percentage by which the credits claimed under this section exceeds seven million dollars.
- (2) The difference between the number one and the amount calculated under paragraph 1 multiplied by the amount of the cap is the adjusted credit cap for the 2008 taxable year.

- b. The tax commissioner shall report any proposed adjustment under this subsection to the budget section of the legislative council for approval.

<sup>262</sup> **SECTION 8.** Three new subsections to section 57-38-30.3 of the North Dakota Century Code are created and enacted as follows:

A taxpayer filing a return under this section is entitled to the credit provided under section 5 of this Act.

A taxpayer filing a return under this section is entitled to the credit provided under section 6 of this Act.

A taxpayer filing a return under this section is entitled to the credit provided under section 7 of this Act.

**SECTION 9. AMENDMENT.** Section 57-55-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-55-04. Taxes - How determined - Disbursement.** The director of tax equalization shall determine the tax for each mobile home by placing an evaluation on 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 under standards and guides determined by the state tax commissioner and applying that evaluation to the preceding year's total mill levies applying to property within the taxing district in which the mobile home is located. The county treasurer shall provide a tax statement for each mobile home subject to taxation under this chapter, including three columns showing, for the taxable year to which the tax statement applies and the two immediately preceding taxable years, the property tax levy in dollars against the mobile home by the county and school district and any city or township that levied taxes against the mobile home. If a mobile home is acquired or moved into this state during the calendar year and a tax permit has not been previously issued for such mobile home in this state for such year, the tax is determined by computing the remaining number of months of the current year to the nearest full month and multiplying that number by one-twelfth of

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<sup>262</sup> Section 57-38-30.3 was also amended by section 46 of House Bill No. 1018, chapter 18, section 3 of House Bill No. 1091, chapter 89, section 2 of House Bill No. 1393, chapter 513, section 2 of House Bill No. 1403, chapter 519, section 1 of House Bill No. 1412, chapter 523, section 1 of Senate Bill No. 2079, chapter 522, and section 2 of Senate Bill No. 2082, chapter 521.

the amount which would be due for the full year. The taxes collected under this chapter 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 10. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$3,604,000, or so much of the sum as may be necessary, to the state tax commissioner for the purpose of enhanced funding for the expanded homestead tax credit as provided in this Act, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 11. APPROPRIATION - TAX DEPARTMENT.** There is appropriated from special funds, the sum of \$1,100,000, or so much of the sum as may be necessary, to the tax commissioner, for the purpose of implementing the provisions of this Act, for the biennium beginning July 1, 2007, and ending June 30, 2009.

**SECTION 12. TRANSFER.** During the biennium beginning July 1, 2007, and ending June 30, 2009, the director of the office of management and budget shall transfer \$115,000,000 from the permanent oil tax trust fund to the general fund.

**SECTION 13. LEGISLATIVE COUNCIL STUDY.** The legislative council shall study in each interim through 2012 the feasibility and desirability of property tax reform and providing property tax relief to taxpayers of the state, with the goal of reduction of each taxpayer's annual property tax bill to an amount that is not more than one and one-half percent of the true and full value of property, and including examination of the proper measure of education funding from local taxation and state resources and the variability of funding resources among taxing districts and examination of improved collection and reporting of property tax information to identify residency of property owners with minimized administrative difficulty. The legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the legislative assembly subsequent to each interim.

**SECTION 14. EFFECTIVE DATE.** Sections 1, 3, and 4 of this Act are effective for taxable years beginning after December 31, 2006. Section 9 of this Act is effective for taxable years beginning after December 31, 2007, for mobile home taxes. Section 2 of this Act is effective for taxable years beginning after December 31, 2007. Sections 5, 6, 7, and 8 of this Act are effective for taxable years beginning after December 31, 2006.

Approved May 1, 2007  
Filed May 2, 2007

**CHAPTER 521****SENATE BILL NO. 2082**

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

**INCOME TAX CREDITS**

AN ACT to amend and reenact subsections 1, 2, and 6 of section 57-38-04 and subsection 4 of section 57-38-30.3 of the North Dakota Century Code, relating to the credit for income taxes paid to another state; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsections 1, 2, and 6 of section 57-38-04 of the North Dakota Century Code are amended and reenacted as follows:

1. a. Income from personal or professional services performed in this state by individuals must be assigned to this state regardless of the residence of the recipients of such income, except that income from such services performed within this state by an individual who resides and has the individual's place of abode in another state to which place of abode the individual customarily returns at least once a month must be excluded from the individual's income for the purposes of this chapter if such income is subject to an income tax imposed by the state in which the individual resides, provided that the state in which the individual resides allows a similar exclusion for income received from similar services performed in that state by residents of North Dakota.
  - b. Notwithstanding any other provision of this chapter, the compensation received from services performed within this state by an individual, who performs services for a common carrier engaged in interstate transportation and who resides and has the individual's place of abode to which the individual customarily returns at least once a month in another state, must be excluded from income to the extent that the income is subject to an income tax imposed by the state of the individual's residence; provided, that the state allows a similar exclusion of the compensation received by residents of North Dakota for similar services performed therein, or a credit against the tax imposed on the income of residents of this state that is substantially similar in effect. For purposes of this subdivision, the term an individual who performs services for a common carrier engaged in interstate transportation is limited to an individual who performs the services for a common carrier only during the course of making regular runs into North Dakota or from within North Dakota to outside North Dakota, or both, on the transportation system of the common carrier.
2. ~~Except as provided in subsection 1:~~

- a. Income received from personal or professional services performed by residents of this state, regardless of where such services are performed, and income received by residents of this state from intangible personal property must be assigned to this state. If a tax is paid to another state or territory of the United States or to the District of Columbia on any income assigned to this state under this subsection, a credit for any tax so paid may be deducted from the tax assessed under this chapter; provided, that this credit for such tax may not exceed the proportion of the tax otherwise due under this chapter that the amount of the taxpayer's adjusted gross income derived from sources in the other taxing jurisdiction bears to the taxpayer's adjusted gross income as computed pursuant to the Internal Revenue Code of 1954, as amended. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner.
  
- b. Notwithstanding any other provision of this chapter, the compensation received from services performed within this state by an individual, who performs services for a common carrier engaged in interstate transportation and who resides and has the individual's place of abode to which the individual customarily returns at least once a month in another state, shall be excluded from income to the extent that such income is subject to an income tax imposed by the state of the individual's residence; provided, that such state allows a similar exclusion of such compensation received by residents of North Dakota for similar services performed therein, or a credit against the tax imposed on the income of residents of this state that is substantially similar in effect. For the purposes of this subdivision, the words "an individual who performs services for a common carrier engaged in interstate transportation" must be limited to an individual who performs such services for a common carrier only during the course of making regular "runs" into North Dakota or from within North Dakota to outside North Dakota, or both, on the transportation system of the common carrier. A resident individual, estate, or trust is entitled to a credit against the tax imposed under this chapter equal to the amount of income tax paid for the taxable year to another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also taxable under this section. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subdivision may not exceed an amount equal to the tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by total federal adjusted gross income less the amounts under subdivisions a and s of subsection 1 of section 57-38-01.2. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subdivision may not exceed the lesser of the following:

- (1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under this subsection.
  - (2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.
6.
  - a. Income and gains received by a resident of this state from tangible property not employed in the business and from tangible property employed in the business of the taxpayer, if the business consists principally of the holding of the property and the collection of income and gains ~~therefrom~~ from the business, must be assigned to this state without regard to the situs of the property.
  - b. Income derived from business activity carried on by residents of this state, whether the business activity is conducted as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, must be assigned to this state without regard to where the business activity 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.
  - c. If a tax is paid to another state or territory of the United States or to the District of Columbia on any income assigned to this state under this subsection, a credit for any tax so paid may be deducted from the tax assessed under this chapter; provided, that this credit for the tax may not exceed the proportion of the tax otherwise due under this chapter that the amount of the taxpayer's adjusted gross income derived from sources in the other taxing jurisdiction bears to the taxpayer's adjusted gross income as computed pursuant to the Internal Revenue Code of 1954, as amended. The tax commissioner may require written proof of the tax paid to another state. The required proof shall be provided in a form and manner as determined by the tax commissioner. A resident individual, estate, or trust is entitled to a credit against the tax imposed under this chapter equal to the amount of income tax paid for the taxable year to another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also subject to tax under this section. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subdivision may not exceed an amount equal to the tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by total federal adjusted gross income less the amounts under subdivisions a and s of subsection 1 of



section 57-38-01.2. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subdivision may not exceed the lesser of the following:

- (1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under subdivisions a and b of subsection 2.
- (2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.

<sup>263</sup> **SECTION 2. AMENDMENT.** Subsection 4 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

4. a. A resident individual, estate, or trust ~~must be allowed~~ is entitled to a credit against the tax otherwise due imposed under this section for the amount of any income tax imposed on paid by the taxpayer for the taxable year by to another state or territory of the United States or the District of Columbia on income derived from sources therein and which in those jurisdictions that is also subject to tax under this section.
- b. ~~The credit provided under this subsection may not exceed the proportion of the tax otherwise due under this section that the amount of the taxpayer's adjusted gross income derived from sources in the other taxing jurisdiction bears to the taxpayer's federal adjusted gross income as reported on the taxpayer's federal income tax return. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subsection may not exceed an amount equal to the tax imposed under this section multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by federal adjusted gross income less the amounts under subdivisions a and b of subsection 2.~~
- c. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subsection may not exceed the lesser of the following:

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<sup>263</sup> Section 57-38-30.3 was also amended by section 46 of House Bill No. 1018, chapter 18, section 3 of House Bill No. 1091, chapter 89, section 2 of House Bill No. 1393, chapter 513, section 2 of House Bill No. 1403, chapter 519, section 1 of House Bill No. 1412, chapter 523, section 8 of Senate Bill No. 2032, chapter 520, and section 1 of Senate Bill No. 2079, chapter 522.

- (1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under subdivisions a and b of subsection 2.
  - (2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.
- e. d. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2006.

Approved March 5, 2007  
Filed March 6, 2007

**CHAPTER 522****SENATE BILL NO. 2079**

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

**INCOME TAX CREDIT COMPUTATION**

AN ACT to amend and reenact section 57-38-30.3 of the North Dakota Century Code, relating to the simplified method of computing tax for individual income tax purposes and the tax credit for unused federal alternative minimum tax; and to provide an effective date.

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

<sup>264</sup> **SECTION 1. AMENDMENT.** Section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30.3. Simplified method of computing tax.**

1. A tax is hereby imposed for each taxable year upon income earned or received in that taxable year by every resident and nonresident individual, estate, and trust. A taxpayer computing the tax under this section is only eligible for those adjustments or credits that are specifically provided for in this section. Provided, that for purposes of this section, any person required to file a state income tax return under this chapter, but who has not computed a federal taxable income figure, shall compute a federal taxable income figure using a pro forma return in order to determine a federal taxable income figure to be used as a starting point in computing state income tax under this section. The tax for individuals is equal to North Dakota taxable income multiplied by the rates in the applicable rate schedule in subdivisions a through d corresponding to an individual's filing status used for federal income tax purposes. For an estate or trust, the schedule in subdivision e must be used for purposes of this subsection.

- a. Single, other than head of household or surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over \$27,050	2.10%
Over \$27,050 but not over \$65,550	\$568.05 plus 3.92% of amount over \$27,050
Over \$65,550 but not over \$136,750	\$2,077.25 plus 4.34% of amount over \$65,550
Over \$136,750 but not over \$297,350	\$5,167.33 plus 5.04% of amount over \$136,750
Over \$297,350	\$13,261.57 plus 5.54% of amount over \$297,350

- b. Married filing jointly and surviving spouse.

<sup>264</sup> Section 57-38-30.3 was also amended by section 46 of House Bill No. 1018, chapter 18, section 3 of House Bill No. 1091, chapter 89, section 2 of House Bill No. 1393, chapter 513, section 2 of House Bill No. 1403, chapter 519, section 1 of House Bill No. 1412, chapter 523, section 8 of Senate Bill No. 2032, chapter 520, and section 2 of Senate Bill No. 2082, chapter 521.

If North Dakota taxable income is:	The tax is equal to:
Not over \$45,200	2.10%
Over \$45,200 but not over \$109,250	\$949.20 plus 3.92% of amount over \$45,200
Over \$109,250 but not over \$166,500	\$3,459.96 plus 4.34% of amount over \$109,250
Over \$166,500 but not over \$297,350	\$5,944.61 plus 5.04% of amount over \$166,500
Over \$297,350	\$12,539.45 plus 5.54% of amount over \$297,350

c. Married filing separately.

If North Dakota taxable income is:	The tax is equal to:
Not over \$22,600	2.10%
Over \$22,600 but not over \$54,625	\$474.60 plus 3.92% of amount over \$22,600
Over \$54,625 but not over \$83,250	\$1,729.98 plus 4.34% of amount over \$54,625
Over \$83,250 but not over \$148,675	\$2,972.31 plus 5.04% of amount over \$83,250
Over \$148,675	\$6,269.73 plus 5.54% of amount over \$148,675

d. Head of household.

If North Dakota taxable income is:	The tax is equal to:
Not over \$36,250	2.10%
Over \$36,250 but not over \$93,650	\$761.25 plus 3.92% of amount over \$36,250
Over \$93,650 but not over \$151,650	\$3,011.33 plus 4.34% of amount over \$93,650
Over \$151,650 but not over \$297,350	\$5,528.53 plus 5.04% of amount over \$151,650
Over \$297,350	\$12,871.81 plus 5.54% of amount over \$297,350

e. Estates and trusts.

If North Dakota taxable income is:	The tax is equal to:
Not over \$1,800	2.10%
Over \$1,800 but not over \$4,250	\$37.80 plus 3.92% of amount over \$1,800
Over \$4,250 but not over \$6,500	\$133.84 plus 4.34% of amount over \$4,250
Over \$6,500 but not over \$8,900	\$231.49 plus 5.04% of amount over \$6,500
Over \$8,900	\$352.45 plus 5.54% of amount over \$8,900

- f. For an individual who is not a resident of this state for the entire year, or for a nonresident estate or trust, the tax is equal to the tax otherwise computed under this subsection multiplied by a fraction in which:

- (1) The numerator is the federal adjusted gross income allocable and apportionable to this state; and
- (2) The denominator is the federal adjusted gross income from all sources reduced by the net income from the amounts specified in subdivisions a and b of subsection 2.

In the case of married individuals filing a joint return, if one spouse is a resident of this state for the entire year and the other spouse is a nonresident for part or all of the tax year, the tax on the joint return must be computed under this subdivision.

- g. For taxable years beginning after December 31, 2001, the tax commissioner shall prescribe new rate schedules that apply in lieu of the schedules set forth in subdivisions a through e. The new schedules must be determined by increasing the minimum and maximum dollar amounts for each income bracket for which a tax is imposed by the cost-of-living adjustment for the taxable year as determined by the secretary of the United States treasury for purposes of section 1(f) of the United States Internal Revenue Code of 1954, as amended. For this purpose, the rate applicable to each income bracket may not be changed, and the manner of applying the cost-of-living adjustment must be the same as that

used for adjusting the income brackets for federal income tax purposes.

2. For purposes of this section, "North Dakota taxable income" means the federal taxable income of an individual, estate, or trust as computed under the Internal Revenue Code of 1986, as amended, adjusted as follows:
  - a. Reduced by interest income from obligations of the United States and income exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
  - b. Reduced by the portion of a distribution from a qualified investment fund described in section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
  - c. Reduced by the amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.
  - d. Reduced by thirty percent of the excess of the taxpayer's net long-term capital gain for the taxable year over the net short-term capital loss for that year, as computed for purposes of the Internal Revenue Code of 1986, as amended. The adjustment provided by this subdivision is allowed only to the extent the net long-term capital gain is allocated to this state.
  - e. Increased by the amount of a lump sum distribution for which income averaging was elected under section 402 of the Internal Revenue Code of 1986 [26 U.S.C. 402], as amended. This adjustment does not apply if the taxpayer received the lump sum distribution while a nonresident of this state and the distribution is exempt from taxation by this state under federal law.
  - f. Increased by an amount equal to the losses that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.
  - g. Reduced by the amount received by the taxpayer as payment for services performed when mobilized under title 10 United States Code federal service as a member of the national guard or reserve member of the armed forces of the United States. This subdivision does not apply to federal service while attending annual training, basic military training, or professional military education.
  - h. Reduced by income from a new and expanding business exempt from state income tax under section 40-57.1-04.
  - i. Reduced by interest and income from bonds issued under chapter 11-37.

- j. Reduced by up to ten thousand dollars of qualified expenses that are related to a donation by a taxpayer or a taxpayer's dependent, while living, of one or more human organs to another human being for human organ transplantation. A taxpayer may claim the reduction in this subdivision only once for each instance of organ donation during the taxable year in which the human organ donation and the human organ transplantation occurs but if qualified expenses are incurred in more than one taxable year, the reduction for those expenses must be claimed in the year in which the expenses are incurred. For purposes of this subdivision:
    - (1) "Human organ transplantation" means the medical procedure by which transfer of a human organ is made from the body of one person to the body of another person.
    - (2) "Organ" means all or part of an individual's liver, pancreas, kidney, intestine, lung, or bone marrow.
    - (3) "Qualified expenses" means lost wages not compensated by sick pay and unreimbursed medical expenses as defined for federal income tax purposes, to the extent not deducted in computing federal taxable income, whether or not the taxpayer itemizes federal income tax deductions.
  - k. Increased by the amount of the contribution upon which the credit under section 57-38-01.21 is computed, but only to the extent that the contribution reduced federal taxable income.
  - l. Reduced by the amount of any payment received by a veteran or beneficiary of a veteran under section 37-28-03 or 37-28-04.
3. Married individuals filing a joint federal income tax return shall file a joint state income tax return if the return is filed under this section. If separate federal income tax returns are filed, one spouse's state income tax return may be filed under this section and the other spouse's income tax return may be filed under the other provisions of this chapter.
4. a. A resident individual, estate, or trust must be allowed a credit against the tax otherwise due under this section for the amount of any income tax imposed on the taxpayer for the taxable year by another state or territory of the United States or the District of Columbia on income derived from sources therein and which is also subject to tax under this section.
- b. The credit provided under this subsection may not exceed the proportion of the tax otherwise due under this section that the amount of the taxpayer's adjusted gross income derived from sources in the other taxing jurisdiction bears to the taxpayer's federal adjusted gross income as reported on the taxpayer's federal income tax return.
- c. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner.

5. Individuals, estates, or trusts that file an amended federal income tax return changing their federal taxable income figure for a year for which an election to file state income tax returns has been made under this section shall file an amended state income tax return to reflect the changes on the federal income tax return.
6. The tax commissioner may prescribe procedures and guidelines to prevent requiring income that had been previously taxed under this chapter from becoming taxed again because of the provisions of this section and may prescribe procedures and guidelines to prevent any income from becoming exempt from taxation because of the provisions of this section if it would otherwise have been subject to taxation under the provisions of this chapter.
7. A taxpayer filing a return under this section is entitled to the ~~credit provided under section 57-38-01.20~~ following tax credits:
  - a. Family care tax credit under section 57-38-01.20.
  - b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
  - c. Agricultural business investment tax credit under section 57-38.6-03.
  - d. Seed capital investment tax credit under section 57-38.5-03.
  - e. Planned gift tax credit under section 57-38-01.21.
  - f. Biodiesel fuel tax credits under sections 57-38-01.22 and 57-38-01.23.
8. A taxpayer filing a return under this section is entitled to the ~~exemptions or credits exemption~~ provided under ~~sections section~~ 40-63-04, 40-63-06, and 40-63-07.
9.
  - a. A taxpayer is entitled to a credit against the tax imposed by this section for any unused federal credit for prior year minimum tax. "Unused federal credit for prior year minimum tax" means the amount of the federal credit for prior year minimum tax attributable to federal alternative minimum tax included in the taxpayer's federal income tax liability for purposes of this section for taxable years beginning before January 1, 2001, reduced by the total amount of the federal credit for prior year minimum tax claimed on the taxpayer's federal income tax return for all taxable years beginning after December 31, 2000.
  - b. The credit under this subsection is equal to fourteen percent of the portion of the unused federal credit for prior year minimum tax claimed on the taxpayer's federal income tax return and may not exceed the taxpayer's tax liability under this section for the taxable year. For a nonresident taxpayer, the credit determined under this subsection must be multiplied by the percentage that the nonresident taxpayer's North Dakota adjusted gross income is of the nonresident's federal adjusted gross income.

- e. ~~The credit under this subsection is not allowed for taxable years beginning after December 31, 2004.~~
40. a. If an individual taxpayer engaged in a farming business elects to average farm income under section 1301 of the Internal Revenue Code [26 U.S.C. 1301], the taxpayer may elect to compute tax under this subsection. If an election to compute tax under this subsection is made, the tax imposed by subsection 1 for the taxable year must be equal to the sum of the following:
- (1) The tax computed under subsection 1 on North Dakota taxable income reduced by elected farm income.
  - (2) The increase in tax imposed by subsection 1 which would result if North Dakota taxable income for each of the three prior taxable years were increased by an amount equal to one-third of the elected farm income. However, if other provisions of this chapter other than this section were used to compute the tax for any of the three prior years, the same provisions in effect for that prior tax year must be used to compute the increase in tax under this paragraph. For purposes of applying this paragraph to taxable years beginning before January 1, 2001, the increase in tax must be determined by recomputing the tax in the manner prescribed by the tax commissioner.
- b. For purposes of this subsection, "elected farm income" means that portion of North Dakota taxable income for the taxable year which is elected farm income as defined in section 1301 of the Internal Revenue Code of 1986 [26 U.S.C. 1301], as amended, reduced by the portion of an exclusion claimed under subdivision d of subsection 2 that is attributable to a net long-term capital gain included in elected farm income.
- c. The reduction in North Dakota taxable income under this subsection must be taken into account for purposes of making an election under this subsection for any subsequent taxable year.
- d. The tax commissioner may prescribe rules, procedures, or guidelines necessary to administer this subsection.
44. 10. The tax commissioner may prescribe tax tables, to be used in computing the tax according to subsection 1, if the amounts of the tax tables are based on the tax rates set forth in subsection 1. If prescribed by the tax commissioner, the tables must be followed by every individual, estate, or trust determining a tax under this section.
- ~~42. An individual, estate, or trust is entitled to a credit against the tax determined under this section as calculated under section 57-38.6-03.~~
- ~~43. A taxpayer filing a return under this section is entitled to the credit provided under section 57-38.5-03.~~
- ~~44. An individual taxpayer filing a return under this section is entitled to the credit provided under section 57-38-01.21.~~



45. A taxpayer filing a return under this section is entitled to the credits provided under sections ~~57-38-01.22~~ and ~~57-38-01.23~~.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2006.

Approved March 7, 2007  
Filed March 8, 2007

**CHAPTER 523****HOUSE BILL NO. 1412**

(Representative N. Johnson)

**TAX CREDITS TO PASSTHROUGH ENTITIES**

AN ACT to create and enact a new subsection to section 57-38-30.3 and a new subsection to section 57-38-30.5 of the North Dakota Century Code, relating to the applicability of the research and experimental expenditures tax credit to a passthrough entity; and to provide an effective date.

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

<sup>265</sup> **SECTION 1.** A new subsection to section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

A taxpayer filing a return under this section is entitled to the credit provided under section 2 of this Act.

<sup>266</sup> **SECTION 2.** A new subsection to section 57-38-30.5 of the North Dakota Century Code is created and enacted as follows:

A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this subsection against the individual's state income tax liability under sections 57-38-29 and 57-38-30.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2006.

Approved March 12, 2007  
Filed March 13, 2007

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<sup>265</sup> Section 57-38-30.3 was also amended by section 46 of House Bill No. 1018, chapter 18, section 3 of House Bill No. 1091, chapter 89, section 2 of House Bill No. 1393, chapter 513, section 2 of House Bill No. 1403, chapter 519, section 8 of Senate Bill No. 2032, chapter 520, section 1 of Senate Bill No. 2079, chapter 522, and section 2 of Senate Bill No. 2082, chapter 521.

<sup>266</sup> Section 57-38-30.5 was also amended by section 47 of House Bill No. 1018, chapter 18.

**CHAPTER 524****SENATE BILL NO. 2083**

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

**SEED CAPITAL AND AGRICULTURAL BUSINESS TAX  
CREDIT AUDITING**

AN ACT to create and enact a new subsection to section 57-38-38 of the North Dakota Century Code, relating to the time period for auditing the seed capital investment tax credit and the agricultural business investment tax credit.

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

**SECTION 1.** A new subsection to section 57-38-38 of the North Dakota Century Code is created and enacted as follows:

For investments made under chapters 57-38.5 and 57-38.6 after December 31, 2002, the tax commissioner has four years after the due date of the return, or four years after the return was filed, whichever period expires later, to audit any seed capital investment tax credit or agricultural business investment tax credit claimed by a taxpayer and assess the tax if additional tax is found due. The provisions of this subsection do not limit or restrict any other time period prescribed in this section for the assessment of tax.

Approved May 1, 2007  
Filed May 2, 2007

**CHAPTER 525****SENATE BILL NO. 2224**

(Senators Grindberg, Dever, Hacker)  
(Representatives Hawken, Keiser, Owens)

**ANGEL FUND INVESTMENT TAX CREDIT**

AN ACT to create and enact a new subsection to section 57-38.5-03 of the North Dakota Century Code, relating to the eligibility for the seed capital investment tax credit for investments made by an angel fund; to amend and reenact subsection 6 of section 57-38.5-01 of the North Dakota Century Code, relating to the definition of taxpayer for purposes of the seed capital investment tax credit; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 6 of section 57-38.5-01 of the North Dakota Century Code is amended and reenacted as follows:

6. "Taxpayer" means an individual, estate, or trust or a corporation or, passthrough entity, or an angel fund. The term does not include a real estate investment trust.

<sup>267</sup> **SECTION 2.** A new subsection to section 57-38.5-03 of the North Dakota Century Code is created and enacted as follows:

An angel fund that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section. The amount of the credit allowed with respect to an angel fund's investment in a qualified business must be determined at the angel fund level. The amount of the total credit determined at the angel fund level must be allowed to the investors in the angel fund in proportion to the investor's respective interests in the fund. An angel fund that is subject to the tax imposed under chapter 57-38 is not eligible for the investment tax credit under this chapter.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2006.

Approved April 30, 2007  
Filed May 1, 2007

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<sup>267</sup> Section 57-38.5-03 was also amended by section 2 of Senate Bill No. 2084, chapter 526.

**CHAPTER 526****SENATE BILL NO. 2084**

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

**SEED CAPITAL INVESTMENT TAX CREDIT**

AN ACT to amend and reenact sections 57-38.5-02 and 57-38.5-03 of the North Dakota Century Code, relating to certification of a qualified business and calculation of the seed capital investment tax credit; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-38.5-02 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.5-02. Certification - Investment reporting by qualified businesses - Maximum investments in qualified businesses.** ~~The director shall certify whether a business that has requested to become a qualified business meets the requirements of subsection 5 of section 57-38.5-01 and the certification must include the period of time the certification covers. The director shall establish the necessary forms and procedures for certifying qualified businesses. For investments made after December 31, 2004, the maximum aggregate amount of qualified investments a qualified business may receive is limited to five hundred thousand dollars under this chapter. The limitation on investments under this section may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.~~

1. The director shall certify whether a business that has requested to become a qualified business meets the requirements of subsection 5 of section 57-38.5-01. The director shall establish the necessary forms and procedures for certifying qualified businesses.
2. A qualified business may apply to the director for a recertification. Only one recertification is available to a qualified business. The application for recertification must be filed with the director within ninety days before the original certification expiry date. The recertification issued by the director must comply with the provisions of subsection 3.
3. A certification letter must be issued by the director to the qualified business. The certification letter must include:
  - a. The certification effective date.
  - b. The certification expiry date. The expiry date may not be more than four years from the certification effective date.
4. The maximum aggregate amount of qualified investments a qualified business may receive for all tax years is limited to five hundred thousand dollars under this chapter. The tax credit allowed on qualified investments in a qualified business must be allowed to taxpayers in the chronological order of the taxpayer's qualified investments as

determined from the forms filed under section 57-38.5-07. The limitation on investments under this subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.

<sup>268</sup> **SECTION 2. AMENDMENT.** Section 57-38.5-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.5-03. Seed capital investment tax credit.** If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability under section 57-38-29, 57-38-30, or 57-38-30.3. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in qualified businesses during the taxable year, subject to the following:

1. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in qualified businesses during the taxable year.
2. The aggregate maximum annual investment for which credit a taxpayer may obtain a tax credit claim under this section is not more than two hundred fifty thousand one hundred twelve thousand five hundred dollars. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
2. In any taxable year, a taxpayer may claim no more than one-third of the credit under this section which is attributable to investments in a single taxable year.
3. Any amount of credit under this section subsection 1 not allowed because of the limitations limitation in this section subsection 2 may be carried forward for up to four taxable years after the taxable year in which the investment was made.
4. A passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the members in proportion to their respective interests in the passthrough entity.
5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.

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<sup>268</sup> Section 57-38.5-03 was also amended by section 2 of Senate Bill No. 2224, chapter 525.

6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. An investment for which a credit is received under this section must remain in the business for at least three years. Investments placed in escrow do not qualify for the credit.
- 6- 7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.
- 7- 8. A taxpayer who owns a controlling interest in the qualified business or ~~whose full-time professional activity is the operation of the business who receives more than fifty percent of the taxpayer's gross annual income from the qualified business~~ is not entitled to a credit under this section. A member of the immediate family of a taxpayer disqualified by this subsection is not entitled to the credit under this section. For purposes of this subsection, "immediate family" means the taxpayer's spouse, parent, sibling, or child or the spouse of any such person.
- 8- 9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The commissioner has four years after the due date of the return or after the return was filed, whichever period expires later, to audit the credit and assess additional tax that may be found due to failure to comply with the provisions of this chapter. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest as provided under section 57-38-45, must be paid by the taxpayer.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2006, and for qualified businesses certified or recertified after December 31, 2006.

Approved March 7, 2007  
Filed March 8, 2007

**CHAPTER 527****SENATE BILL NO. 2081**

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

**AGRICULTURAL BUSINESS INVESTMENT TAX  
CREDIT**

AN ACT to amend and reenact sections 57-38.6-01, 57-38.6-02, and 57-38.6-03 of the North Dakota Century Code, relating to definitions and to the certification of a qualified business and calculation of the agricultural business investment tax credit; and to provide an effective date.

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

<sup>269</sup> **SECTION 1. AMENDMENT.** Section 57-38.6-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.6-01. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Agricultural commodity processing facility" means a facility that through processing involving the employment of knowledge and labor adds value to an agricultural commodity capable of being raised in this state.
2. "Director" means the director of the department of commerce division of economic development and finance.
3. "Qualified business" means a cooperative, corporation, partnership, or limited liability company that:
  - a. Is incorporated or organized in this state after December 31, 2000, for the primary purpose of processing and marketing agricultural commodities capable of being raised in this state;
  - b. Has been certified by the securities commissioner to be in compliance under the securities laws of this state; and
  - c. Has an agricultural commodity processing facility, or intends to locate one, in this state; ~~and~~
  - d. ~~Is among the first ten businesses that meets the requirements of this subsection, but not a business that was previously certified as a qualified business under chapter 57-38.5.~~
4. "Qualified investment" means an investment in cash or an investment of a fee simple interest in real property located in this state. For purposes

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<sup>269</sup> Section 57-38.6-01 was also amended by section 49 of House Bill No. 1018, chapter 18.



of this chapter, the definition of real property does not include any personal property that may become a fixture to the real property, as defined by chapter 41-09, which is added to the real property following investment of the real property in the qualified business.

5. "Taxpayer" means an individual, estate, trust, corporation, partnership, or limited liability company.

**SECTION 2. AMENDMENT.** Section 57-38.6-02 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.6-02. Certification - Investment reporting by qualified businesses.**

~~The director shall certify whether a business that has requested to become a qualified business meets the requirements of subsection 3 of section 57-38.6-01. The director shall establish the necessary forms and procedures for certifying qualified businesses. The director is not required to recertify a business as a qualified business under this chapter if the business was previously certified by the director as a qualified business under chapter 57-38.5.~~

1. The director shall certify whether a business that has requested to become a qualified business meets the requirements of subsection 3 of section 57-38.6-01. The director shall establish the necessary forms and procedures for certifying qualified businesses.
2. A qualified business may apply to the director for a recertification. Only one recertification is available to a qualified business. The application for recertification must be filed with the director within ninety days before the original certification expiry date. The recertification issued by the director must comply with the provisions of subsection 3.
3. The director may not certify more than ten qualified businesses during each calendar year. This limitation does not apply to a qualified business that is seeking recertification during the calendar year.
4. A certification letter must be issued by the director to the qualified business. The certification letter must include:
  - a. The certification effective date.
  - b. The certification expiry date. The expiry date may not be more than four years from the certification effective date.

**SECTION 3. AMENDMENT.** Section 57-38.6-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.6-03. Agricultural business investment tax credit.** If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability as determined under section 57-38-29, 57-38-30, or 57-38-30.3. ~~The amount of the credit to which a taxpayer is entitled is thirty percent of the amount invested by the taxpayer in qualified businesses during the taxable year, subject to the following:~~

1. ~~The maximum annual credit a taxpayer may obtain under this section is fifty thousand dollars and no taxpayer may obtain more than two hundred fifty thousand dollars in credits under this section over any combination of taxable years. This subsection may not be interpreted to~~

limit additional investment by a taxpayer for which that taxpayer is not applying for a credit. The amount of the credit to which a taxpayer is entitled is thirty percent of the amount invested by the taxpayer in qualified businesses during the taxable year.

2. In any taxable year, a taxpayer may claim no more than fifty percent of the credit under this section which is attributable to qualified investments in a single taxable year. The amount of the credit allowed under this section for any taxable year may not exceed fifty percent of the taxpayer's tax liability as otherwise determined under chapter 57-38. The maximum annual credit a taxpayer may obtain under this section is fifty thousand dollars and no taxpayer may obtain more than two hundred fifty thousand dollars in credits under this section over any combination of taxable years. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
3. Any amount of The credit under this section not allowed because of the limitations in this section may not exceed the liability for tax under chapter 57-38. If the amount of credit under this section exceeds the liability for tax, the excess may be carried forward for up to five ten taxable years after the taxable year in which the investment was made.
4. A partnership, subchapter S corporation, limited liability company that for tax purposes is treated like a partnership, or any other passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and, except for the tax liability limitation under subsection 2, the amount of the credit allowed with respect to the passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the passthrough entity's owners, in proportion to their respective ownership interests in the passthrough entity.
5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purposes of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.
6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. A qualified investment must be in the form of a purchase of ownership interests or the right to receive payment of dividends from the business. An investment for which a credit is received under this section must remain in the business for at least three years. An investment placed in escrow does not qualify for the credit.
- 6- 7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business. Real property that qualifies as an investment must be used in, and be an integral part of, the qualified business's North Dakota business operations.
8. If the investment is a contribution of real property:

- a. The value of the contribution may not exceed the appraised value as established by a licensed or certified appraiser licensed or certified under the requirements of sections 43-23.3-04, 43-23.3-04.1, 43-23.3-05, 43-23.3-06, 43-23.3-07, 43-23.3-08, 43-23.3-09, 43-23.3-10, 43-23.3-11, and 43-23.3-12.
  - b. The value of the contribution must be approved by the governing body of the qualified business applying the valuation standards set forth in subsection 3 of section 10-19.1-63.
  - c. The qualified business receiving the contribution of real property shall provide to the tax commissioner a copy of the appraised valuation, a copy of the governing body's resolution approving the value of the contribution, and a copy of the statement of full consideration within thirty days after the instrument transferring title to the real property is recorded with the register of deeds as provided in chapter 47-19.
  - d. A taxpayer making a contribution of real property is entitled to the tax credit in the taxable year in which the instrument transferring title to the real property is recorded with the register of deeds as provided in chapter 47-19.
7. 9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest provided under section 57-38-45, must be paid by the taxpayer.

**SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2006, and for qualified businesses certified or recertified after December 31, 2006.

Approved April 4, 2007  
Filed April 5, 2007

**CHAPTER 528****SENATE BILL NO. 2380**

(Senators Urlacher, Cook, Stenehjem)  
(Representatives Berg, Drovdal, Weiler)

**STREAMLINED SALES TAX ADMINISTRATION**

AN ACT to create and enact four new sections to chapter 57-39.4 of the North Dakota Century Code, relating to administration of the streamlined sales tax agreement; to amend and reenact subsection 2 of section 11-09.1-05, subsection 16 of section 40-05.1-06, section 57-39.2-01, subsection 1 of section 57-39.2-02.1, subsection 26 of section 57-39.2-04, sections 57-39.2-04.1, 57-39.4-01, 57-39.4-06, 57-39.4-07, and 57-39.4-08, subsection 1 of section 57-39.4-09, sections 57-39.4-10, 57-39.4-15, 57-39.4-16, 57-39.4-17, and 57-39.4-18, subsection 1 of section 57-39.4-20, subsection 12 of section 57-40.2-04, and section 57-40.2-04.1 of the North Dakota Century Code, relating to sales and use tax amendments necessary for compliance with the streamlined sales and use tax agreement; and to repeal sections 57-39.2-29 and 57-39.4-13 of the North Dakota Century Code, relating to administration of sourcing and multiple points of use rules for the streamlined sales tax agreement.

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

<sup>270</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 11-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

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 and use taxes, farm machinery gross receipts taxes, alcoholic beverage gross receipts 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 that determines what property or acts are subject to, or exempt from, ad valorem taxes. A charter or ordinance or act of the governing body of a home rule county may not supersede section 11-11-55.1 relating to the sixty percent petition requirement for improvements and of section 40-22-18 relating to the barring

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<sup>270</sup> Section 11-09.1-05 was also amended by section 7 of Senate Bill No. 2214, chapter 293.

proceeding for improvement projects. After December 31, 2005, sales and use taxes, farm machinery gross receipts taxes, and alcoholic beverage gross receipts taxes levied under this chapter:

- a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed at multiple rates with the exception of sales of electricity, piped natural or artificial gas, or other heating fuels delivered by the seller or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.
- b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of ninety days' notice to the tax commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the seller.
- c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax, except for farm machinery gross receipts tax purposes.
- d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1 and must be administered by the tax commissioner in accordance with the relevant provisions of chapter 57-39.2, including reporting and paying requirements, correction of errors, payment of refunds, and application of penalty and interest.

After December 31, 2005, any portion of a charter or any portion of an ordinance or act of a governing body of a home rule county passed pursuant to a charter which does not conform to the requirements of this subsection is invalid to the extent that it does not conform. The invalidity of a portion of a charter or ordinance or act of a governing body of a home rule county because it does not conform to this subsection does not affect the validity of any other portion of the charter or ordinance or act of a governing body of a home rule county or the eligibility for a refund under section 57-01-02.1. Any taxes imposed under this chapter on farm machinery, farm irrigation equipment, and farm machinery repair parts used exclusively for agricultural purposes, or on alcoholic beverages, which were in effect on December 31, 2005, become gross receipts taxes after December 31, 2005.

<sup>271</sup> **SECTION 2. AMENDMENT.** Subsection 16 of section 40-05.1-06 of the North Dakota Century Code is amended and reenacted as follows:

16. To impose registration fees on motor vehicles, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, or sales and use taxes in addition to any other taxes imposed by law. After

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<sup>271</sup> Section 40-05.1-06 was also amended by section 20 of Senate Bill No. 2214, chapter 293.

December 31, 2005, sales and use taxes and gross receipts taxes levied under this chapter:

- a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed at multiple rates with the exception of sales of electricity, piped natural or artificial gas, or other heating fuels delivered by the seller or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.
- b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of ninety days' notice to the tax commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the seller.
- c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax purposes, except for farm machinery gross receipts tax.
- d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1 and must be administered by the tax commissioner in accordance with the relevant provisions of chapter 57-39.2, including reporting and paying requirements, correction of errors, payment of refunds, and application of penalty and interest.

<sup>272</sup> **SECTION 3. AMENDMENT.** Section 57-39.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.2-01. Definitions.** The following words, terms, and phrases, when used in this chapter, have the meaning ascribed to them in this section, unless the context clearly indicates a different meaning:

1. "Bundled transaction" means the retail sale of two or more products, except real property and services to real property, where the products are otherwise distinct and identifiable, and the products are sold for one nonitemized price. A bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.
  - a. Distinct and identifiable products do not include:
    - (1) Packaging such as containers, boxes, sacks, bags, and bottles or other materials such as wrapping, labels, tags, and instruction guides that accompany the retail sale of the products and are incidental or immaterial to the retail sale. Examples of packaging that are incidental or immaterial

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<sup>272</sup> Section 57-39.2-01 was also amended by section 3 of Senate Bill No. 2225, chapter 446.

- include grocery sacks, shoeboxes, drycleaning garment bags, and express delivery envelopes and boxes.
- (2) A product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge.
- (3) Items included in the definition of gross receipts.
- b. The phrase "one nonitemized price" does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form, including an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.
- c. A transaction that otherwise meets the definition of a bundled transaction as defined in this section is not a "bundled transaction" if it is:
- (1) The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service;
- (2) The retail sale of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service;
- (3) A transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimis.
- (a) "De minimis" means the seller's purchase price or sales price of the taxable products is ten percent or less of the total purchase price or sales price of the bundled products.
- (b) Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimis.
- (c) Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or
- (4) The retail sale of exempt tangible personal property and taxable tangible personal property where:

- (a) The transaction includes food and food ingredients, drugs, durable medical equipment, mobility-enhancing equipment, over-the-counter drugs, prosthetic devices, or medical supplies; and
  - (b) If the seller's purchase price or sales price of the taxable tangible personal property is fifty percent or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty percent determination for a transaction.
- ~~2.~~ "Business" includes any activity engaged in by any person or caused to be engaged in by the person with the object of gain, benefit, or advantage, either direct or indirect.
- ~~3.~~ "Certified automated system" means software certified under chapter 57-39.4 to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the state, and maintain a record of the transaction.
- ~~2.~~ 4. "Certified service provider" means an agent certified under the agreement adopted under chapter 57-39.4 to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit taxes on its own purchases.
- ~~3.~~ 5. "Commissioner" means the tax commissioner of the state of North Dakota.
- ~~4.~~ 6. "Delivery charges" means charges by the seller for preparation and delivery to a location designated by the purchaser of personal property or services. For purposes of this subsection, "preparation and delivery" includes transportation, shipping, postage, handling, crating, and packing. If shipment includes exempt property and taxable property, the seller should allocate the delivery charge by using a percentage based on:
  - a. The total sales price of the taxable property compared to the total sales price of all property in the shipment; or
  - b. The total weight of the taxable property compared to the total weight of all property in the shipment.

The seller must tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the exempt property.
- ~~5.~~ 7. "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail"



does not include multiple items of printed material delivered to a single address.

- ~~6-~~ 8. "Drug" means a compound, substance, or preparation and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:
- a. Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement of any of these publications;
  - b. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or
  - c. Intended to affect the structure or any function of the body.
- ~~7-~~ 9. "Farm machinery" means all vehicular implements and attachment units, designed and sold for direct use in planting, cultivating, or harvesting farm products or used in connection with the production of agricultural produce or products, livestock, or poultry on farms, which are operated, drawn, or propelled by motor or animal power. "Farm machinery" does not include vehicular implements operated wholly by hand or a motor vehicle required to be registered under chapter 57-40.3. "Farm machinery" does not include machinery that may be used for other than agricultural purposes, including tires, farm machinery repair parts, tools, shop equipment, grain bins, feed bunks, fencing materials, and other farm supplies and equipment. For purposes of this subsection, "attachment unit" means any part or combination of parts having an independent function, other than farm machinery repair parts, which when attached or affixed to farm machinery is used exclusively for agricultural purposes.
- ~~8-~~ 10. "Farm machinery repair parts" means repair or replacement parts for farm machinery that have a specific or generic part number assigned by the manufacturer of the farm machinery. "Farm machinery repair parts" do not include tires, fluid, gas, grease, lubricant, wax, or paint.
- ~~9-~~ 11. a. "Gross receipts" means the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:
- (1) The seller's cost of the property sold;
  - (2) The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
  - (3) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
  - (4) Delivery charges; and

- (5) The value of exempt personal property given to the purchaser when taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and
  - (6) Credit for any trade-in, as determined by state law.
- b. "Gross receipts" also includes consideration received by the seller from third parties if:
- (1) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;
  - (2) The seller has an obligation to pass the price reduction or discount through to the purchaser;
  - (3) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
  - (4) One of the following criteria is met:
    - (a) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;
    - (b) The purchaser provides identification to the seller to show that the purchaser is a member of a group or organization entitled to a price reduction or discount however, a "preferred customer" card that is available to any patron does not constitute membership in such a group; or
    - (c) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.
- c. "Gross receipts" also includes the total amount of sales of every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer.
- e. d. "Gross receipts" does not include:
- (1) Discounts, including cash, term, or coupons that are not reimbursed by a third party, which are allowed by a seller and taken by a purchaser on a sale;
  - (2) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the

amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

- (3) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar documents given to the purchaser; and
- (4) The sale price of property returned by a customer when the full sale price is refunded either in cash or credit. When tangible personal property is taken in trade or in a series of trades as a credit or part payment of a retail sale taxable under this chapter, if the tangible personal property traded in will be subject to tax imposed by chapter 57-39.5 or 57-40.3 or if the tangible personal property traded in is used farm machinery or used irrigation equipment, the credit or trade-in value allowed by the retailer is not included in gross receipts of the retailer.

~~40.~~ 12. "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend. "Lease or rental" does not include:

- a. A transfer of possession or control of property under a security agreement or deferred payment plan, which requires the transfer upon completion of the required payments;
- b. A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars or one percent of the total required payments; or
- c. Providing tangible personal property with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subdivision, an operator must do more than maintain, inspect, or set up the tangible personal property.

This definition will be applied only prospectively from the date of adoption and will have no retroactive impact on existing leases or rentals.

~~44.~~ 13. "Local governmental unit" means incorporated cities, counties, school districts, and townships.

~~42.~~ 14. "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.

~~43.~~ 15. "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a person authorized by the laws of this state to prescribe drugs.

44. 16. "Relief agency" means the state, any county, city and county, city or district thereof, or an agency engaged in actual relief work.
45. 17. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrental. "Retail sale" or "sale at retail" includes the sale, including the leasing or renting, to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property; the sale of steam, gas, and communication service to retail consumers or users; the sale of vulcanizing, recapping, and retreading services for tires; the furnishing of bingo cards; the ordering, selecting, or aiding a customer to select any goods, wares, or merchandise from any price list or catalog, which the customer might order, or be ordered for such customer to be shipped directly to such customer; the sale or furnishing of hotel, motel, or tourist court accommodations, tickets, or admissions to any place of amusement, athletic event, or place of entertainment, including the playing of any machine for amusement or entertainment in response to the use of a coin; and the sales of magazines and other periodicals. By the term "processing" is meant any tangible personal property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a sale of tangible personal property for a purpose other than for processing; the delivery of possession within the state of North Dakota of tangible personal property by a wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota retail sales tax permit or to a person who by contract incorporates such tangible personal property into, or attaches it to, real property situated in another state may not be considered a taxable sale if such delivery of possession would not be treated as a taxable sale in that state. As used in this subsection, the word "consumer" includes any hospital, infirmary, sanatorium, nursing home, home for the aged, or similar institution that furnishes services to any patient or occupant. The sale of an item of tangible personal property to a person under a finance leasing agreement over the term of which the property will be substantially consumed must be considered a retail sale if the purchaser elects to treat it as such by paying or causing the transferor to pay the sales tax thereon to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-39.2-12.
46. 18. "Retailer" or "seller" includes every person engaged in the business of leasing or renting hotel, motel, or tourist court accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, and communication services, or tickets or admissions to places of amusement, entertainment, and athletic events, including the playing of any machine for amusement or entertainment in response to the use of a coin, or magazines, or other periodicals; any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03; and includes any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of

tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in the manner provided in this chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

47. 19. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatever, for a consideration, and includes the furnishing or service of steam, gas, or communication, the furnishing of bingo cards, the furnishing of hotel, motel, or tourist court accommodations, the furnishing of tickets or admissions to any place of amusement, athletic event, or place of entertainment, including the playing of any machine for amusement or entertainment in response to the use of a coin, and sales of magazines and other periodicals. Provided, the words "magazines and other periodicals" as used in this subsection do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.
48. 20. "Sales tax" means the tax levied under section 57-39.2-02.1 or a conforming tax imposed under home rule authority by a city or county.
49. 21. "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software.

<sup>273</sup> **SECTION 4. AMENDMENT.** Subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes used for residential or business purposes, and except as otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within this state of the following to consumers or users:

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<sup>273</sup> Section 57-39.2-02.1 was also amended by section 1 of House Bill No. 1049, chapter 529, and section 4 of Senate Bill No. 2225, chapter 446.

- a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes and including bundled transactions consisting entirely of tangible personal property.
- b. The furnishing or service of communication services or steam other than steam used for processing agricultural products.
- c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity, and including the furnishing of bingo cards and the playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.
- d. Magazines and other periodicals.
- e. The leasing or renting of a hotel or motel room or tourist court accommodations.
- f. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.
- g. Coal mined in this state and used for heating buildings, except for coal used in agricultural processing or sugar beet refining plants.
- h. Sale, lease, or rental of a computer and prewritten computer software, including prewritten computer software delivered electronically or by load and leave. For purposes of this subdivision:
  - (1) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.
  - (2) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.
  - (3) "Delivered electronically" means delivered from the seller to the purchaser by means other than tangible storage media.
  - (4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
  - (5) "Load and leave" means delivery to the purchaser by use of a tangible storage media when the tangible storage media is not physically transferred to the purchaser.
  - (6) "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more

"prewritten computer software" programs or prewritten portions thereof does not cause the combination to be other than "prewritten computer software". "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. If a person modifies or enhances "computer software" of which the person is not the author or creator, the person is deemed to be the author or creator only of such person's modifications or enhancements. "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, if such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software". However, if there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software".

<sup>274</sup> **SECTION 5. AMENDMENT.** Subsection 26 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

26. Gross receipts from sales of prosthetic devices, durable medical equipment, mobility-enhancing equipment, or supplies for ostomy care or bladder dysfunction. For purposes of this subsection:
- a. "Durable medical equipment" means equipment, not including mobility-enhancing equipment, for home use, including repair and replacement parts for such equipment, which:
    - (1) Can withstand repeated use;
    - (2) Is primarily and customarily used to serve a medical purpose;
    - (3) Generally is not useful to a person in the absence of illness or injury; and
    - (4) Is not worn in or on the body.

"Durable medical equipment" includes equipment and devices designed or intended for ostomy care and management and equipment and devices used exclusively for a person with bladder dysfunction. An exemption certificate is not required to obtain exemption.

- b. "Mobility-enhancing equipment" means equipment, not including durable medical equipment sold under a doctor's written

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<sup>274</sup> Section 57-39.2-04 was also amended by section 3 of House Bill No. 1049, chapter 529, and section 3 of House Bill No. 1393, chapter 513.

prescription, including repair and replacement parts for mobility-enhancing equipment, which:

- (1) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either at home or in a motor vehicle;
- (2) Is not generally used by persons with normal mobility; and
- (3) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

"Mobility-enhancing equipment" includes crutches and wheelchairs for the use of disabled persons, equipment, including manual control units, van lifts, van door opening units, and raised roofs for attaching to or modifying a motor vehicle for use by a permanently physically disabled person, equipment, including elevators, dumbwaiters, chair lifts, and bedroom or bathroom lifts, whether or not sold for attaching to real property, for use by a permanently physically disabled person in that person's principal dwelling, and equipment, including manual control units, for attaching to or modifying motorized implements of husbandry for use by a permanently physically disabled person.

- c. "Prosthetic device" means a replacement, corrective, or supportive device sold under a doctor's written prescription, including repair and replacement parts for such a device, worn on or in the body to:

- (1) Artificially replace a missing portion of the body;
- (2) Prevent or correct a physical deformity or malfunction; or
- (3) Support a weak or deformed portion of the body.

"Prosthetic device" includes artificial devices individually designed, constructed, or altered solely for the use of a particular disabled person so as to become a brace, support, supplement, correction, or substitute for the bodily structure, including the extremities of the individual, artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body, artificial teeth sold by a dentist, and eyeglasses when especially designed or prescribed by an ophthalmologist, physician, oculist, or optometrist for the personal use of the owner or purchaser.

- d. "Supplies for ostomy care or bladder dysfunction" includes:

- (1) Supplies designed or intended for ostomy care and management, including collection devices, colostomy irrigation equipment and supplies, skin barriers or skin protectors, and other supplies especially designed for use of ostomates.
- (2) Supplies to be used exclusively by a person with bladder dysfunction, including catheters, collection devices,



incontinent pads and pants, and other items used for the care and management of bladder dysfunction.

**SECTION 6. AMENDMENT.** Section 57-39.2-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.2-04.1. Sales tax exemption for food and food ingredients.** Gross receipts from sales for human consumption of food and food ingredients are exempt from taxes imposed under this chapter. Gross receipts from sales for human consumption of food and food products given, or to be given, as samples to consumers for consumption on the premises of a food store are exempt from the sales tax imposed by this chapter. For purposes of this section, "food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for taste or nutritional value.

1. For purposes of this section, "food" and "food ingredients" do not include:
  - a. Alcoholic beverages.
  - b. Candy or chewing gum.
  - c. Dietary supplements.
  - d. Prepared food.
  - e. Soft drinks containing ~~less than~~ fifty percent or less fruit juice.
  - f. Tobacco.
2. For purposes of this section:
  - a. "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.
  - b. "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavoring in the form of bars, drops, or pieces. Candy does not include any preparation containing flour and does not require refrigeration.
  - c. "Dietary supplement" means any product, other than tobacco, intended to supplement the diet which contains one or more of the following dietary ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; an oral concentrate, metabolite, constitute, extract, or combination of any dietary ingredients described in this sentence and which is intended for ingestion in tablet, capsule, powder, soft gel, gel cap, or liquid form, or if not represented for use as a sole item of a meal or of a diet; and is required to be labeled as a dietary supplement, identifiable by the supplemental facts box found on the label and as required pursuant to 21 CFR section 101.36.

## d. "Prepared food" means:

- (1) Food sold in a heated state or heated by the seller;
- (2) Two or more food ingredients mixed or combined by the seller for sale as a single item; or
- (3) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

## e. "Prepared food" does not mean:

- (1) Food that is only cut, repackaged, or pasteurized by the seller.
- (2) Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the food and drug administration in chapter 3, part 401.11, of its food code so as to prevent foodborne illness.
- (3) If sold without eating utensils provided by the seller:
  - (a) Food sold by a seller whose proper primary North American industry classification system classification is manufacturing in sector 311, except subsector 3118, bakeries.
  - (b) Food sold in an unheated state by weight or volume as a single item.
  - (c) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

## f. "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

## g. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

3. For purposes of this section, "eating utensils provided by the seller" is determined as follows:

- a. Determine the prepared food ratio, where the numerator is the sum of food defined in paragraphs 1 and 2 of subdivision d of subsection 2 plus food when plates, bowls, glasses, or cups are necessary for the purchaser to receive the food and the denominator is all sales of food and food ingredients, including prepared food, candy, dietary supplements, and soft drinks. Alcoholic beverages are not included in either the numerator or denominator.

- b. If the prepared food ratio is seventy-five percent or less, utensils are provided by the seller if the seller's practice is to physically give or hand them to the purchaser, except plates, bowls, glasses, or cups necessary for the purchaser to receive the food need only be made available.
- c. If the prepared food ratio is greater than seventy-five percent, utensils are provided to the seller if they are made available to the purchaser. When sellers with a food ratio greater than seventy-five percent sell items that contain four or more servings packaged as one item and sold for a single price, the item does not become prepared food unless the seller's practice is to physically give or hand the purchaser utensils as in subdivision b. Serving size is determined by the label of the item sold. If no label is available, the seller will reasonably determine the number of servings.
- d. When a seller sells food items that have a utensil placed in a package by a person other than the seller and that person's North American industry classification system classification code is that of manufactures (sector 311), the seller shall not be considered to have provided the utensils except as in subdivisions b and c above. For any other packager with any other North American industry classification system classification code, the seller shall be considered to have provided the utensil.
- e. The prepared food ratio is to be calculated by the seller for each calendar or fiscal year not later than ninety days after the end of each year and based on the seller's data from the previous year.
- f. A single prepared food ratio will be determined annually and used for all of the seller's locations in the state.
- g. A new business shall make a good-faith estimate of the prepared food ratio for the first year and shall adjust its good-faith estimate after the first three months if the actual prepared food ratio is materially different than the estimate.

**SECTION 7. AMENDMENT.** Section 57-39.4-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-01. Adoption of streamlined sales and use tax agreement.** North Dakota adopts the streamlined sales and use tax agreement as adopted November 12, 2002, by the member states of the streamlined sales tax project. The entire agreement is adopted by reference with the exception of ~~article~~ articles III and V, which ~~is~~ are adopted as set out in this chapter.

**SECTION 8. AMENDMENT.** Section 57-39.4-06 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-06. (305) Local rate and boundary changes.** Each member state that has local jurisdictions that levy a sales or use tax shall:

1. Provide that local rate changes will be effective only on the first day of a calendar quarter after a minimum of sixty days' notice to sellers.

2. Apply local sales tax rate changes to purchases from printed catalogs wherein the purchaser computed the tax based upon local tax rates published in the catalog only on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to sellers.
3. For sales and use tax purposes only, apply local jurisdiction boundary changes only on the first day of a calendar quarter after a minimum of sixty days' notice to sellers.
4. Provide and maintain a data base that describes boundary changes for all taxing jurisdictions. This data base shall include a description of the change and the effective date of the change for sales and use tax purposes.
5. Provide and maintain a data base of all sales and use tax rates for all of the jurisdictions levying taxes within the state. For the identification of states, counties, cities, and parishes, codes corresponding to the rates must be provided according to federal information processing standards as developed by the national institute of standards and technology. For the identification of all other jurisdictions, codes corresponding to the rates must be in the format determined by the governing board.
6. Provide and maintain a data base that assigns each five-digit and nine-digit zip code within a member state to the proper tax rates and jurisdictions. The state must apply the lowest combined tax rate imposed in the zip code area if the area includes more than one tax rate in any level of taxing jurisdictions. If a nine-digit zip code designation is not available for a street address or if a seller or certified service provider is unable to determine the nine-digit zip code designation ~~of applicable to a purchaser purchase~~ after exercising due diligence to determine the designation, the seller or certified service provider may apply the rate for the five-digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or certified service provider has exercised due diligence if the seller has attempted to determine the nine-digit zip code designation by utilizing software approved by the governing board that makes this designation from the street address and the five-digit zip code ~~of the purchaser applicable to a purchase~~.
7. ~~Participate with other member states in~~ Have the development option of an providing address-based system boundary data base records for assigning taxing jurisdictions. The system and their associated rates which shall be in addition to the requirements of subsection 6. The data base records must be in the same approved format as the data base records under subsection 6 and must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act [4 U.S.C.A. sec. 449 119(a)]. The governing board may allow a member state to require sellers that register under this agreement to use an address-based system data base provided by that member state. If any member state develops an address-based assignment system data base records pursuant to the Mobile Telecommunications Sourcing Act agreement, a seller or certified service provider may use that system those data base records in place of the system five-digit and nine-digit zip code data base records provided for in subsection 6. If a seller or certified service provider is unable to determine the applicable rate and jurisdiction using an address-based data base record after exercising

due diligence, the seller or certified service provider may apply the nine-digit zip code designation applicable to a purchase. If a nine-digit zip code designation is not available for a street address or if a seller or certified service provider is unable to determine the nine-digit zip code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or certified service provider may apply the rate for the five-digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or certified service provider has exercised due diligence if the seller or certified service provider has attempted to determine the tax rate and jurisdiction by utilizing software approved by the governing board that makes this assignment from the address and zip code information applicable to the purchase.

8. States which have met the requirements of subsection 6 may also elect to certify vendor-provided address-based data bases for assigning tax rates and jurisdictions. The data bases must be in the same approved format as the data base records under subsection 7 and must meet the requirements developed under the federal Mobile Telecommunications Sourcing Act [4 U.S.C.A. sec. 119(a)]. If a state certifies a vendor-provided address-based data base, a seller or certified service provider may use that data base in place of the data base provided for in subsection 6 or 7. Vendors providing address-based data bases may request certification of their data bases from the governing board. Certification by the governing board does not replace the requirement that the data bases be certified by the states individually.

**SECTION 9. AMENDMENT.** Section 57-39.4-07 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-07. (306) Relief from certain liability.** Each member state shall relieve sellers and certified service providers using data bases under subsections 6, 7, and 8 of section 57-39.4-06 from liability to the member state and local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider relying on erroneous data provided by a member state on tax rates, boundaries, or taxing jurisdiction assignments. ~~A~~ After providing adequate notice as determined by the governing board, a member state that provides an address-based ~~system~~ data base for assigning taxing jurisdictions under subsection 7 or 8 of section 57-39.4-06 ~~or under the federal Mobile Telecommunications Sourcing Act will not be required to provide~~ ~~may cease providing~~ liability relief for errors resulting from the reliance on the ~~information~~ data base provided by the member state under subsection 6 of section 57-39.4-06. If a seller demonstrates that requiring the use of the address-based data base would create an undue hardship, a member state and the governing board may extend the relief from liability to such seller for a designated period of time.

**SECTION 10. AMENDMENT.** Section 57-39.4-08 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-08. (307) Data base requirements and exceptions.**

1. The electronic data bases provided for in subsections 4, 5, 6, and 7 of section 57-39.4-06 shall be in a downloadable format approved by the governing board. The data bases may be directly provided by the state or provided by a vendor as designated by the state. A data base provided by a vendor as designated by a state shall be applicable to

and subject to all provisions of sections 57-39.4-06 and 57-39.4-07 and this section. These data bases must be provided at no cost to the user of the data base.

2. The provisions of subsections 6 and 7 of section 57-39.4-06 do not apply when the purchased product is received by the purchaser at the business location of the seller.
3. The data bases provided by subsections 4, 5, ~~and 6, and 7~~ of section 57-39.4-06 are not a requirement of a state prior to entering into the agreement. The governing board shall establish the effective dates for availability and use of the data bases. A seller that did not have a requirement to register in a state prior to registering under this agreement or a certified service provider shall not be required to collect sales or use taxes for the state until the first day of the calendar quarter commencing more than sixty days after the state has provided the data bases required by subsections 4, 5, and 6 of section 57-39.4-06. Provided, for the initial implementation of the agreement, a certified service provider shall be required to collect sales and use taxes for each member state, subject to the provisions of the agreement, under the terms of the operating agreement entered into between the certified service provider and the governing board in order to provide adequate time for testing and loading of the data bases.

**SECTION 11. AMENDMENT.** Subsection 1 of section 57-39.4-09 of the North Dakota Century Code is amended and reenacted as follows:

1. No member state shall have multiple state sales and use tax rates on items of personal property or services ~~after December 31, 2005~~, except that a member state may impose a single additional rate, which may be zero, on food and food ingredients and drugs as defined by state law pursuant to the agreement.

<sup>275</sup> **SECTION 12. AMENDMENT.** Section 57-39.4-10 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-10. (309) Application of general sourcing rules and exclusions from the rules.**

1. Each member state shall agree to require sellers to source the retail sale of a product in accordance with section 57-39.4-11. The provisions of section 57-39.4-11 apply regardless of the characterization of a product as tangible personal property, a digital good, or a service. The provisions of section 57-39.4-11 only apply to determine a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's retail sale of a product. These provisions do not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdictions of that use.

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<sup>275</sup> Section 57-39.4-10 was also amended by section 26 of House Bill No. 1014, chapter 14.

2. Section 57-39.4-11 does not apply to sales or use taxes levied on the following:
  - a. The retail sale or transfer of watercraft, modular homes, manufactured homes, or mobile homes. These items must be sourced according to the requirements of each member state.
  - b. The retail sale, excluding lease or rental, of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in subsection 4 of section 57-39.4-11. The retail sale of these items shall be sourced according to the requirements of each member state, and the lease or rental of these items must be sourced according to subsection 3 of section 57-39.4-11.
  - c. Telecommunications services and ancillary services, as set out in section 57-39.4-16, and internet access service shall be sourced in accordance with section 57-39.4-15.
  - d. Until December 31, 2007, florist sales as defined by each member state. Prior to this date, these items must be sourced according to the requirements of each member state.

**SECTION 13. AMENDMENT.** Section 57-39.4-15 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-15. (314) Telecommunications sourcing.**

1. Except for the defined telecommunications services in subsection 3, the sale of telecommunications services sold on a call-by-call basis shall be sourced to each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.
2. Except for the defined telecommunications services in subsection 3, a sale of telecommunications services sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use.
3. The sale of the following telecommunications services shall be sourced to each level of taxing jurisdiction as follows:
  - a. A sale of mobile telecommunications services other than air-to-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act.
  - b. A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either the seller's telecommunications system, or information received by the seller from its service provider, if the system used to transport such signals is not that of the seller.
  - c. A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in accordance with section 57-39.4-11. However, in the case of a sale of ~~mobile telecommunications~~

~~services that are prepaid telecommunications services prepaid wireless calling service~~, the rule provided in subdivision e of subsection 1 of section 57-39.4-11 shall include as an option the location associated with the mobile telephone number.

d. A sale of a private communication service is sourced as follows:

- (1) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.
- (2) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.
- (3) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.
- (4) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

4. The sale of internet access service is sourced to the customer's place of primary use.

5. The sale of an ancillary service is sourced to the customer's place of primary use.

**SECTION 14. AMENDMENT.** Section 57-39.4-16 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-16. (315) Telecommunications sourcing definitions.** For the purpose of section 57-39.4-15, the following definitions apply:

1. "Air-to-ground radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.
2. "Ancillary services" means services that are associated with or incidental to the provision of telecommunications services, including detailed telecommunications billing, directory assistance, vertical service, and voice mail services.
3. "Call-by-call basis" means any method of charging for telecommunications services in which the price is measured by individual calls.



- ~~3-~~ 4. "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.
- ~~4-~~ 5. "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications services is the customer of the telecommunications services, but this sentence only applies for the purpose of sourcing sales of telecommunications services under section 57-39.4-15. "Customer" does not include a reseller of telecommunications services or for mobile telecommunications services of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.
- ~~5-~~ 6. "Customer channel termination point" means the location where the customer either inputs or receives the communications.
- ~~6-~~ 7. "End user" means the person who utilizes the telecommunications services. In the case of an entity, "end user" means the individual who utilizes the services on behalf of the entity.
- ~~7-~~ 8. "Home service provider" means the same as that term is defined in section 124(5) of Public Law 106-252, Mobile Telecommunications Sourcing Act.
- ~~8-~~ 9. "Mobile telecommunications service" means the same as that term is defined in section 124(7) of Public Law 106-252, Mobile Telecommunications Sourcing Act.
- ~~9-~~ 10. "Place of primary use" means the street address representative of where the customer's use of the telecommunications services primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.
- ~~10-~~ 11. "Post-paid calling service" means the telecommunications services obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to which a telephone number which is not associated with the origination or termination of the telecommunications services. A post-paid calling service includes telecommunications services, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively telecommunications services.
- ~~11-~~ 12. "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.
13. "Prepaid wireless calling service" means a telecommunication service that provides the right to utilize mobile wireless service as well as other

nontelecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

~~42-~~ 14. "Private communication service" means telecommunications services that entitle the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

~~43-~~ 15. "Service address" means:

- a. The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.
- b. If the location in subdivision a is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.
- c. If the location in subdivisions a and b are not known, the service address means the location of the customer's place of primary use.

**SECTION 15. AMENDMENT.** Section 57-39.4-17 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-17. (316) Enactment of exemptions.** A member state shall enact entity-based, use-based, and product-based exemptions in accordance with the provisions of this section and utilize common definitions in accordance with the provisions of section 57-39.4-28 and the agreement.

1. A member state may enact a product-based exemption without restriction if the agreement does not have a definition for the product or for a term that includes the product. If the agreement has a definition for the product or for a term that includes the product, a member state may exempt all items included within the definition but shall not exempt only part of the items included within the definition unless the agreement sets out the exemption for part of the items as an acceptable variation.
  - a. A member state may enact a product-based exemption for a product if the agreement has a definition for such product and the member state utilizes in the exemption the product definition in a manner consistent with the agreement and section 57-39.4-28.
  - b. A member state may enact a product-based exemption exempting all items included within a definition in the agreement but shall not exempt specific items included within the product definition unless the product definition sets out an exclusion for such item.

2. A member state may enact an entity-based or a use-based exemption for a product without restriction if the agreement does not have a definition for the product whose use or purchase by a specific entity is exempt or for a term that includes the product. If the agreement has a definition for the product whose use or specific purchase is exempt, a
  - a. A member state may enact an entity-based or a use-based exemption that applies to that product as long as the exemption utilizes the agreement definition of the product. If the agreement does not have a definition for the product whose use or specific purchase is exempt but has a definition for a term that includes the product, a member state may enact an entity-based or a use-based exemption for the product without restriction for a product if the agreement has a definition for such product and the member state utilizes in the exemption the product definition in a manner consistent with the agreement and section 57-39.4-28.
  - b. A member state may enact an entity-based exemption for an item if the agreement does not have a definition for such items but has a definition for a product that includes such item.
  - c. A member state may not enact a use-based exemption for an item which effectively constitutes a product-based exemption if the agreement has a definition for a product that includes such item.
  - d. A member state may enact a use-based exemption for an item if the agreement has a definition for a product that includes such item, if not prohibited in subdivision c of this subsection and if consistent with a definition in the agreement.
3. For purposes of complying with the requirements in this section, the inclusion of a product within the definition of tangible personal property is disregarded.

**SECTION 16. AMENDMENT.** Section 57-39.4-18 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-18. (317) Administration of exemptions.**

1. Each member state shall observe the following provisions when a purchaser claims an exemption:
  - a. The seller shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase as determined by the governing board.
  - b. A purchaser is not required to provide a signature to claim an exemption from tax unless a paper exemption certificate is used.
  - c. The seller shall use the standard form for claiming an exemption electronically as adopted by the governing board.
  - d. The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.

- e. A member state may utilize a system in which the purchaser exempt from the payment of the tax is issued an identification number that shall be presented to the seller at the time of the sale.
  - f. The seller shall maintain proper records of exempt transactions and provide them to a member state when requested.
  - g. A member state shall administer use-based and entity-based exemptions when practicable through a direct pay permit, an exemption certificate, or another means that does not burden sellers.
  - h. In the case of drop shipment sales, member states must allow a third-party vendor, drop shipper, to claim a resale exemption based on an exemption certificate by its customer or reseller or any other acceptable information available to the third-party vendor evidencing qualification for a resale exemption, regardless of whether the customer or reseller is registered to collect and remit sales and use tax in the state where the sale is sourced.
2. Each member state shall relieve sellers that follow the requirements of this section from ~~any~~ the tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption and to hold the purchaser liable for the nonpayment of tax. This relief from liability does not apply to a seller who fraudulently fails to collect the tax ~~or~~; to a seller who solicits purchasers to participate in the unlawful claim of an exemption; to a seller who accepts an exemption certificate when the purchaser claims an entity-based exemption when the subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller and the state in which that location resides provides an exemption certificate that clearly and affirmatively indicates grayed out exemption reason types on the uniform form and posting it on a state's web site is an indicator that the claimed exemption is not available in that state.
  3. Each state shall relieve a seller of the tax otherwise applicable if the seller obtains a fully completed exemption certificate or captures the relevant data elements required under the agreement within ninety days subsequent to the date of sale.
    - a. If the seller has not obtained an exemption certificate or all relevant data elements as provided by this section, the seller may, within one hundred twenty days subsequent to a request for substantiation by a member state, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith. For purposes of this section, member states may continue to apply their own standards of good faith until such time as a uniform standard for good faith is defined in the agreement.
    - b. Nothing in this section shall affect the ability of member states to require purchasers to update exemption certificate information or to reapply with the state to claim certain exemptions.
    - c. Notwithstanding the aforementioned, each member state shall relieve a seller of the tax otherwise applicable if it obtains a blanket

exemption certificate for a purchaser with which the seller has a recurring business relationship. States may not request from the seller renewal of blanket certificates or updates of exemption certificate information or data elements when there is a recurring business relationship between the buyer and seller. For purposes of this section, a recurring business relationship exists when a period of no more than twelve months elapses between sales transactions.

**SECTION 17.** A new section to chapter 57-39.4 of the North Dakota Century Code is created and enacted as follows:

**(330) Bundled transactions.**

1. A member state shall adopt and utilize to determine tax treatment, the core definition for a "bundled transaction" in the agreement.
2. Member states are not restricted in their tax treatment of bundled transactions except as otherwise provided in the agreement. Member states are not restricted in their ability to treat some bundled transactions differently from other bundled transactions.
3. In the case of a bundled transaction that includes any of the following: telecommunication service, ancillary service, internet access, or audio or video programming service:
  - a. If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes.
  - b. If the price is attributable to products that are subject to tax at different tax rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes.
  - c. The provisions of this section shall apply unless otherwise provided by federal law.

**SECTION 18.** A new section to chapter 57-39.4 of the North Dakota Century Code is created and enacted as follows:

**(331) Relief from certain liability for purchasers.**

1. A member state shall relieve a purchaser from liability for penalty to that member state and its local jurisdictions for having failed to pay the correct amount of sales or use tax in the following circumstances:

- a. A purchaser's seller or certified service provider relied on erroneous data provided by that member state on tax rates, boundaries, taxing jurisdiction assignments, or in the taxability matrix completed under section 57-39.4-29.
  - b. A purchaser holding a direct pay permit relied on erroneous data provided by that member state on tax rates, boundaries, taxing jurisdiction assignments, or in the taxability matrix completed by that member state under section 57-39.4-29.
  - c. A purchaser relied on erroneous data provided by that member state in the taxability matrix completed by that member state under section 57-39.4-29.
  - d. A purchaser using data bases under subsections 6, 7, and 8 of section 57-39.4-06 relied on erroneous data provided by that member state on tax rates, boundaries, or taxing jurisdiction assignments. After providing adequate notice as determined by the governing board, a member state that provides an address-based data base for assigning taxing jurisdictions under subsection 7 or 8 of section 57-39.4-06 may cease providing liability relief for errors resulting from the reliance on the data base provided by the member state under the provisions of subsection 6 of section 57-39.4-06.
2. Except when prohibited by a member state's constitution, a member state shall also relieve a purchaser from liability for tax and interest to that member state and its local jurisdictions for having failed to pay the correct amount of sales or use tax in the circumstances described in subsection 1, provided that with respect to reliance on the taxability matrix completed by that member state under section 57-39.4-29, such relief is limited to the state's erroneous classification in the taxability matrix of terms included in the agreement as "taxable", "exempt", "included in sales price", "excluded from sales price", "included in the definition", or "excluded from the definition".
  3. For purposes of this section, the term "penalty" means an amount imposed for noncompliance that is not fraudulent, willful, or intentional which is in addition to the correct amount of sales or use tax and interest.
  4. A member state may allow relief on terms and conditions more favorable to a purchaser than the terms required by this section.

**SECTION 19.** A new section to chapter 57-39.4 of the North Dakota Century Code is created and enacted as follows:

**(501) Certification of service providers and automated systems.**

1. The governing board shall certify automated systems and service providers to aid in the administration of sale and use tax collections.
2. The governing board may certify a person as a certified service provider if the person meets all of the following requirements:
  - a. The person uses a certified automated system;

- b. The person integrates its certified automated system with the system of a seller for whom the person collects tax so that the tax due on a sale is determined at the time of the sale;
  - c. The person agrees to remit the taxes it collects at the time and in the manner specified by the member states;
  - d. The person agrees to file returns on behalf of the sellers for whom it collects tax;
  - e. The person agrees to protect the privacy of tax information it obtains in accordance with section 57-39.4-22; and
  - f. The person enters into a contract with the member states and agrees to comply with the terms of the contract.
3. The governing board may certify a software program as a certified automated system if the governing board determines that the program meets all of the following requirements:
  - a. It determines the applicable state and local sales and use tax rate for a transaction, in accordance with sections 57-39.4-10 through 57-39.4-17, inclusive;
  - b. It determines whether an item is exempt from tax;
  - c. It determines the amount of tax to be remitted for each taxpayer for a reporting period;
  - d. It can generate reports and returns as required by the governing board; and
  - e. It can meet any other requirement set by the governing board.

The governing board may establish one or more sales tax performance standards for model 3 sellers that meet the eligibility criteria set by the governing board and that developed a proprietary system to determine the amount of sales and use tax due on transactions.

**SECTION 20.** A new section to chapter 57-39.4 of the North Dakota Century Code is created and enacted as follows:

**(502) State review and approval of certified automated system software and certain liability relief.**

1. Each member state shall review software submitted to the governing board for certification as a certified automated system as provided for in this chapter. Such review shall include a review to determine that the program adequately classifies the state's product-based exemptions. Upon completion of the review, the state shall certify to the governing board its acceptance of the classifications made by the system.
2. Each member state shall relieve certified service providers and model 2 sellers from liability to the member state and local jurisdictions for not collecting sales or use taxes resulting from the certified service provider

or model 2 seller relying on the certification provided by the member state.

3. Each member state shall provide relief from liability to certified service providers for not collecting sales and use taxes in the same manner as provided to sellers under the provisions of section 57-39.4-18.
4. The governing board and the member states shall not be responsible for classification of an item or transaction within the product-based exemptions certified. The relief from liability provided in this section shall not be available for a certified service provider or model 2 seller that has incorrectly classified an item or transaction into a product-based exemption certified by a member state. This subsection shall not apply to the individual listing of items or transactions within a product definition approved by the governing board or the member states.
5. A member state determines that an item or transaction is incorrectly classified as to its taxability, it shall notify the certified service provider or model 2 seller of the incorrect classification. The certified service provider or model 2 seller shall have ten days to revise the classification after receipt of notice from the member state of the determination. Upon expiration of the ten days, the certified service provider or model 2 seller shall be liable for the failure to collect the correct amount of sales or use taxes due and owing to the member state.

**SECTION 21. AMENDMENT.** Subsection 1 of section 57-39.4-20 of the North Dakota Century Code is amended and reenacted as follows:

1. Require only one remittance for each return except as provided in this subsection. If any additional remittance is required, it may only be required from sellers that collect more than thirty thousand dollars in sales and use taxes in the member state during the preceding calendar year as provided herein. The state shall allow the amount of the any additional remittance shall to be determined through a calculation method rather than actual collections and. Any additional remittances shall not require the filing of an additional return.

**SECTION 22. AMENDMENT.** Subsection 12 of section 57-40.2-04 of the North Dakota Century Code is amended and reenacted as follows:

12. Gross receipts from sales of prosthetic devices, durable medical equipment, or mobility-enhancing equipment. For purposes of this subsection:
  - a. "Durable medical equipment" means equipment, not including mobility-enhancing equipment, for home use, including repair and replacement parts for such equipment, which:
    - (1) Can withstand repeated use;
    - (2) Is primarily and customarily used to serve a medical purpose;
    - (3) Generally is not useful to a person in the absence of illness or injury; and



- (4) Is not worn in or on the body.

"Durable medical equipment" includes equipment and devices designed or intended for ostomy care and management and equipment and devices used exclusively for a person with bladder dysfunction. An exemption certificate is not required to obtain exemption.

- b. "Mobility-enhancing equipment" means equipment not including durable medical equipment sold under a doctor's written prescription, including repair and replacement parts for mobility-enhancing equipment, which:

- (1) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either at home or in a motor vehicle;
- (2) Is not generally used by a person with normal mobility; and
- (3) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

"Mobility-enhancing equipment" includes crutches and wheelchairs for the use of disabled persons, equipment, including manual control units, van lifts, van door opening units, and raised roofs for attaching to or modifying a motor vehicle for use by a permanently physically disabled person, equipment, including elevators, dumbwaiters, chair lifts, and bedroom or bathroom lifts, whether or not sold for attaching to real property, for use by a permanently physically disabled person in that person's principal dwelling, and equipment, including manual control units, for attaching to or modifying motorized implements of husbandry for use by a permanently physically disabled person.

- c. "Prosthetic device" means a replacement, corrective, or supportive device sold under a doctor's written prescription, including repair and replacement parts for such a device, worn on or in the body to:

- (1) Artificially replace a missing portion of the body;
- (2) Prevent or correct a physical deformity or malfunction; or
- (3) Support a weak or deformed portion of the body.

"Prosthetic device" includes artificial devices individually designed, constructed, or altered solely for the use of a particular disabled person so as to become a brace, support, supplement, correction, or substitute for the bodily structure, including the extremities of the individual, artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body, artificial teeth sold by a dentist, and eyeglasses when especially designed or prescribed by an ophthalmologist, physician, oculist, or optometrist for the personal use of the owner or purchaser.

- d. "Supplies for ostomy care or bladder dysfunction" includes:

- (1) Supplies designed or intended for ostomy care and management, including collection devices, colostomy irrigation equipment and supplies, skin barriers or skin protectors, and other supplies especially designed for use of ostomates.
- (2) Supplies to be used exclusively by a person with bladder dysfunction, including catheters, collection devices, incontinence pads and pants, and other items used for the care and management of bladder dysfunction.

**SECTION 23. AMENDMENT.** Section 57-40.2-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.2-04.1. Use tax exemption for food and food ingredients.** Gross receipts from sales for human consumption of food and food ingredients are exempt from taxes imposed under this chapter. Gross receipts from sales for human consumption of food and food products given, or to be given, as samples to consumers for consumption on the premises of a food store are exempt from taxes imposed by this chapter. For purposes of this section, "food" and "food ingredients" mean substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, which are sold for ingestion or chewing by humans and are consumed for taste or nutritional value.

1. For purposes of this section, "food" and "food ingredients" do not include:
  - a. Alcoholic beverages.
  - b. Candy or chewing gum.
  - c. Dietary supplements.
  - d. Prepared food.
  - e. Soft drinks containing ~~less than~~ fifty percent or less fruit juice.
  - f. Tobacco.
2. For purposes of this section:
  - a. "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.
  - b. "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavoring in the form of bars, drops, or pieces. Candy does not include any preparation containing flour and that does not require refrigeration.
  - c. "Dietary supplement" means any product, other than tobacco, intended to supplement the diet which contains one or more of the following dietary ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; an oral

concentrate, metabolite, constitute, extract, or combination of any dietary ingredients described in this subdivision and which is intended for ingestion in tablet, capsule, powder, soft gel cap, or liquid form, or if not represented for use as a sole item of a meal or of a diet; and is required to be labeled as a dietary supplement, identifiable by the supplemental facts box found on the label and as required pursuant to 21 CFR 101.36.

d. "Prepared food" means:

- (1) Food sold in a heated state or heated by the seller;
- (2) Two or more food ingredients mixed or combined by the seller for sale as a single item; or
- (3) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

e. "Prepared food" does not mean:

- (1) Food that is only cut, repackaged, or pasteurized by the seller.
- (2) Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the food and drug administration in chapter 3, part 401.11, of its food code so as to prevent foodborne illness.
- (3) If sold without eating utensils provided by the seller:
  - (a) Food sold by a seller whose proper primary North American industry classification system classification is manufacturing in sector 311, except subsector 3118, bakeries.
  - (b) Food sold in an unheated state by weight or volume as a single item.
  - (c) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

f. "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

g. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

3. For purposes of this section, "eating utensils provided by the seller" is determined as follows:

- a. Determine the prepared food ratio, where the numerator is the sum of food defined in paragraphs 1 and 2 of subdivision d of subsection 2 plus food when plates, bowls, glasses, or cups are necessary for the purchaser to receive the food and the denominator is all sales of food and food ingredients, including prepared food, candy, dietary supplements, and soft drinks. Alcoholic beverages are not included in either the numerator or denominator.
- b. If the prepared food ratio is seventy-five percent or less, utensils are provided by the seller if the seller's practice is to physically give or hand them to the purchaser, except plates, bowls, glasses, or cups necessary for the purchaser to receive the food need only be made available.
- c. If the prepared food ratio is greater than seventy-five percent, utensils are provided to the seller if they are made available to the purchaser. When sellers with a food ratio greater than seventy-five percent sell items that contain four or more servings packaged as one item and sold for a single price, the item does not become prepared food unless the seller's practice is to physically give or hand the purchaser utensils as in subdivision b. Serving size is determined by the label of the item sold. If no label is available, the seller will reasonably determine the number of servings.
- d. When a seller sells food items that have a utensil placed in a package by a person other than the seller and that person's North American industry classification system classification code is that of manufactures (sector 311), the seller shall not be considered to have provided the utensils except as in subdivisions b and c. For any other packager with any other North American industry classification system classification code, the seller shall be considered to have provided the utensil.
- e. The prepared food ratio is to be calculated by the seller for each calendar or fiscal year not later than ninety days after the end of each year and based on the seller's data from the previous year.
- f. A single prepared food ratio will be determined annually and used for all of the seller's locations in the state.
- g. A new business shall make a good-faith estimate of the prepared food ratio for the first year and shall adjust its good-faith estimate after the first three months if the actual prepared food ratio is materially different than the estimate.

**SECTION 24. REPEAL.** Sections 57-39.2-29 and 57-39.4-13 of the North Dakota Century Code are repealed.

Approved March 9, 2007  
Filed March 12, 2007

**CHAPTER 529****HOUSE BILL NO. 1049**

(Representatives Carlson, Delzer, Dosch, Kasper, Thoreson, Weiler)

**HEATING FUEL TAX EXEMPTION**

AN ACT to create and enact a new subsection to section 57-39.2-04 of the North Dakota Century Code, relating to a sales and use tax exemption for sales of natural gas and other fuels for heating purposes; to amend and reenact subsection 1 of section 57-39.2-02.1, section 57-39.2-03.6, subsection 44 of section 57-39.2-04, subsection 3 of section 57-40.2-02.1, and section 57-43.2-02.3 of the North Dakota Century Code, relating to a sales and use tax exemption for coal sold for use as heating fuel and a special fuels tax rate reduction and exemption for sales of natural gas and for special fuels sold for use as heating fuel; to repeal section 57-39.2-03.6 and subsection 3 of section 57-40.2-02.1 of the North Dakota Century Code, relating to the imposition and rate of sales and use taxes on sales of natural gas; and to provide an effective date.

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

<sup>276</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes used for residential or business purposes, and except as otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within this state 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.
  - b. The furnishing or service of communication services or steam other than steam used for processing agricultural products.
  - c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity, and including the furnishing of bingo cards and the playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.

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<sup>276</sup> Section 57-39.2-02.1 was also amended by section 4 of Senate Bill No. 2225, chapter 446, and section 4 of Senate Bill No. 2380, chapter 528.

- 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.
- g. ~~Coal mined in this state and used for heating buildings, except for coal used in agricultural processing or sugar beet refining plants.~~
- h. Sale, lease, or rental of a computer and prewritten computer software, including prewritten computer software delivered electronically or by load and leave. For purposes of this subdivision:
  - (1) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.
  - (2) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.
  - (3) "Delivered electronically" means delivered from the seller to the purchaser by means other than tangible storage media.
  - (4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
  - (5) "Load and leave" means delivery to the purchaser by use of a tangible storage media when the tangible storage media is not physically transferred to the purchaser.
  - (6) "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more "prewritten computer software" programs or prewritten portions thereof does not cause the combination to be other than "prewritten computer software". "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. If a person modifies or enhances "computer software" of which the person is not the author or creator, the person is deemed to be the author or creator only of such person's modifications or enhancements. "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, if such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software". However, if there is a reasonable, separately stated charge or an invoice or other statement of

the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software".

**SECTION 2. AMENDMENT.** Section 57-39.2-03.6 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.2-03.6. Sales tax rate on natural gas sales.** Notwithstanding any other provisions of this chapter, the rate of the tax imposed under this chapter upon the gross receipts of retailers from all sales at retail of natural gas to retail consumers or users is ~~four one percent from January 1, 1993, through December 31, 1993; three percent from January 1, 1994, through December 31, 1994; and two percent after December 31, 1994.~~

<sup>277</sup> **SECTION 3. AMENDMENT.** Subsection 44 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

44. Gross receipts from all sales of coal ~~used in agricultural processing or sugar beet refining plants located within this state~~ that is exempt from the coal severance tax.

**SECTION 4.** A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from sales of natural gas or sales of fuels used for heating purposes.

**SECTION 5. AMENDMENT.** Subsection 3 of section 57-40.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

3. An excise tax is imposed on the storage, use, or consumption in this state of natural gas consumed by a final user at the rate of ~~four one percent from January 1, 1993, through December 31, 1993; three percent from January 1, 1994, through December 31, 1994; and two percent after December 31, 1994,~~ if sales tax has not been applied as provided by section 57-39.2-03.6.

**SECTION 6. AMENDMENT.** Section 57-43.2-02.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-43.2-02.3. Exemptions.**

1. Special fuel commonly known as diesel fuel which is dyed for federal fuel tax exemption purposes and sold for ~~use as heating fuel or for an agricultural, industrial, or railroad purpose~~ is exempt from the special fuel tax imposed by section 57-43.2-02 at the time the fuel is sold to the consumer and is subject instead to the tax imposed by section 57-43.2-03. Special fuel known as diesel fuel which is dyed for federal fuel tax exemption purposes and sold for use as heating fuel is exempt from the special fuel tax imposed by section 57-43.2-02 and subject to a

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<sup>277</sup> Section 57-39.2-04 was also amended by section 3 of House Bill No. 1393, chapter 513, and section 5 of Senate Bill No. 2380, chapter 528.

tax at a rate of two cents per gallon under section 57-43.2-03 from January 1, 2008, through June 30, 2009, and after that date is exempt from the special fuel tax imposed by sections 57-43.2-02 and 57-43.2-03. Fuel purchased for use in a licensed motor vehicle is not exempt from the tax imposed by section 57-43.2-02.

2. Special fuel, other than diesel fuel, sold for use as heating fuel or for an agricultural, industrial, or railroad purpose is exempt from the special fuel tax imposed by section 57-43.2-02 at the time the fuel is sold to the consumer and is subject instead to the tax imposed by section 57-43.2-03. Propane sold for use as heating fuel is exempt from the special fuel tax imposed by section 57-43.2-02 and subject to a tax at a rate of one percent under section 57-43.2-03 from January 1, 2008, through June 30, 2009, and thereafter is exempt from the special fuel tax imposed by sections 57-43.2-02 and 57-43.2-03 at the time the fuel is sold to the consumer. Special fuel, other than diesel fuel and propane, sold for use as heating fuel is exempt from the special fuel tax imposed by section 57-43.2-02 and subject to a tax at a rate of two cents per gallon under section 57-43.2-03 from January 1, 2008, through June 30, 2009, and thereafter is exempt from the special fuel tax imposed by sections 57-43.2-02 and 57-43.2-03 at the time the fuel is sold to the consumer. Fuel purchased for use in a licensed motor vehicle is not exempt from the tax imposed by section 57-43.2-02.
3. A consumer purchasing special fuel for a use in which it becomes an ingredient or a component part of tangible personal property intended to be sold ultimately at retail is exempt from the tax imposed by section 57-43.2-02 and is not subject to the tax imposed by section 57-43.2-03.

**SECTION 7. REPEAL.** Section 57-39.2-03.6 and subsection 3 of section 57-40.2-02.1 of the North Dakota Century Code are repealed.

**SECTION 8. EFFECTIVE DATE.** Sections 1, 2, 3, 5, and 6 of this Act are effective for taxable events occurring after December 31, 2007. Sections 4 and 7 of this Act are effective for taxable events occurring after June 30, 2009.

Approved April 30, 2007  
Filed May 1, 2007



**CHAPTER 530****HOUSE BILL NO. 1365**

(Representatives Belter, Kerzman)

(Senators Christmann, O'Connell)

**COAL CONVERSION FACILITY TAXES**

AN ACT to amend and reenact sections 57-39.2-04.2 and 57-40.2-04.2, subsections 3 and 11 of section 57-60-01, subsections 2, 3, and 5 of section 57-60-02, sections 57-60-06 and 57-60-07, and subsection 1 of section 57-60-14 of the North Dakota Century Code, relating to the definition of power plant, repowering, and coal conversion facility for sales, use, and privilege tax purposes, the imposition of taxes on coal conversion facilities, the powers of the tax commissioner, and allocation of revenue from coal conversion facilities; and to declare an emergency.

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

<sup>278</sup> **SECTION 1. AMENDMENT.** Section 57-39.2-04.2 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.2-04.2. (Effective through June 30, 2007) Reduced rate and exemption for power plant construction, production, environmental upgrade, and repowering equipment.**

1. As used in this section, unless the context otherwise requires:
  - a. "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.
  - b. "Operator" means any person owning, holding, or leasing a power plant.
  - c. "Power plant" means:
    - (1) An electrical generating plant, and all additions to the plant, which processes or converts ~~ignite coal~~ lignite 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) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power

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<sup>278</sup> Section 57-39.2-04.2 was also amended by section 2 of Senate Bill No. 2298, chapter 516.

through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.

- d. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
  - e. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting lignite coal from its natural form into electrical power.
2. Sales of production or environmental upgrade equipment that is delivered on or after January 1, 2007, and used exclusively in power plants or repowering existing power plants that begin construction after June 30, 1991, are exempt from the tax imposed by this chapter.
  3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to add environmental upgrades to existing power plants or repowering existing power plants are exempt from the tax imposed by this chapter.
  4. To receive the reduced rate or exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the reduced rate or exemption. If a certificate is not received prior to the purchase, the operator shall pay the applicable tax imposed by this chapter and apply to the commissioner for a refund.
  5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

**(Effective after June 30, 2007) Reduced rate and exemption for power plant construction, production, environmental upgrade, and repowering equipment and oil refinery or gas processing plant environmental upgrade equipment.**

1. As used in this section, unless the context otherwise requires:
  - a. (1) "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.
  - (2) "Environmental upgrade" for purposes of a process unit means an investment greater than one hundred thousand dollars in machinery, equipment, and related facilities for

reducing emissions, increasing efficiency, or enhancing reliability of the equipment at a new or existing process unit.

- b. "Operator" means any person owning, holding, or leasing a power plant or process unit.
  - c. "Power plant" means:
    - (1) An electrical generating plant, and all additions to the plant, which processes or converts ~~lignite coal~~ lignite 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) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.
  - d. "Process unit" means an oil refinery or gas processing plant and all adjacent units that are utilized in the processing of crude oil or natural gas.
  - e. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
  - f. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting ~~lignite~~ lignite coal from its natural form into electrical power.
2. Sales of production or environmental upgrade equipment that is delivered on or after January 1, 2007, and used exclusively in power plants or repowering existing power plants or in processing units ~~that begin construction after June 30, 1994,~~ are exempt from the tax imposed by this chapter.
  3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to add environmental upgrades to existing power plants or repowering existing power plants or to add environmental upgrades to existing process units are exempt from the tax imposed by this chapter.
  4. To receive the reduced rate or exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the reduced rate or exemption. If a certificate is not received prior to the purchase, the operator shall pay the applicable tax imposed by this chapter and apply to the commissioner for a refund.

5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

<sup>279</sup> **SECTION 2. AMENDMENT.** Section 57-40.2-04.2 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.2-04.2. (Effective through June 30, 2007) Reduced rate and exemption for power plant construction, production, environmental upgrade, and repowering equipment.**

1. As used in this section, unless the context otherwise requires:
  - a. "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.
  - b. "Operator" means any person owning, holding, or leasing a power plant.
  - c. "Power plant" means:
    - (1) An electrical generating plant, and all additions to the plant, which processes or converts ~~ignite~~ lignite 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) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.
  - d. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
  - e. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting ~~ignite~~ lignite coal from its natural form into electric power.

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<sup>279</sup> Section 57-40.2-04.2 was also amended by section 5 of Senate Bill No. 2298, chapter 516.

2. Sales of production or environmental upgrade equipment that is delivered on or after January 1, 2007, and used exclusively in power plants or repowering existing power plants that begin construction after June 30, 1994, are exempt from the tax imposed by this chapter.
3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to add environmental upgrades to existing power plants or repowering existing power plants are exempt from the tax imposed by this chapter.
4. To receive the reduced rate or exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the reduced rate or exemption. If a certificate is not received prior to the purchase, the operator shall pay the applicable tax imposed by this chapter and apply to the commissioner for a refund.
5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

**(Effective after June 30, 2007) Reduced rate and exemption for power plant construction, production, environmental upgrade, and repowering equipment and oil refinery or gas processing plant environmental upgrade equipment.**

1. As used in this section, unless the context otherwise requires:
  - a. (1) "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.
  - (2) "Environmental upgrade" for purposes of a process unit means an investment greater than one hundred thousand dollars in machinery, equipment, and related facilities for reducing emissions, increasing efficiency, or enhancing reliability of the equipment at a new or existing process unit.
  - b. "Operator" means any person owning, holding, or leasing a power plant or process unit.
  - c. "Power plant" means:
    - (1) An electrical generating plant, and all additions to the plant, which processes or converts lignite 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) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.
  - d. "Process unit" means an oil refinery or gas processing plant and all adjacent units that are utilized in the processing of crude oil or natural gas.
  - e. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
  - f. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting ~~ignite~~ coal from its natural form into electric power.
2. Sales of production or environmental upgrade equipment that is delivered on or after January 1, 2007, and used exclusively in power plants or repowering existing power plants or in process units that begin construction after June 30, 1994, are exempt from the tax imposed by this chapter.
  3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to add environmental upgrades to existing power plants or repowering existing power plants or to add environmental upgrades to existing process units are exempt from the tax imposed by this chapter.
  4. To receive the reduced rate or exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the reduced rate or exemption. If a certificate is not received prior to the purchase, the operator shall pay the applicable tax imposed by this chapter and apply to the commissioner for a refund.
  5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

<sup>280</sup> **SECTION 3. AMENDMENT.** Subsections 3 and 11 of section 57-60-01 of the North Dakota Century Code are amended and reenacted as follows:

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<sup>280</sup> Section 57-60-01 was also amended by section 5 of House Bill No. 1071, chapter 501.

3. "Coal conversion facility" means any of the following:
  - a. A plant, other than an electrical generating plant or a coal beneficiation plant, with all additions thereto, which processes or converts coal from its natural form into a form substantially different in chemical or physical properties, including 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 [453592.37 metric tons] of coal per year;
  - b. An electrical generating plant, 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 ten thousand kilowatts or more;
  - c. A plant, with all additions thereto, which is designed for coal beneficiation; or
  - d. A gas-fired electrical generating facility, and all additions to the facility, which generates electrical power through the consumption of gas produced by the conversion of lignite coal from its natural form into gas and has a capacity of ten thousand kilowatts or more.
  
11. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting lignite coal from its natural form into electric power.

**SECTION 4. AMENDMENT.** Subsections 2, 3, and 5 of section 57-60-02 of the North Dakota Century Code are amended and reenacted as follows:

2. For electrical generating plants, the tax is at a rate of sixty-five one-hundredths of one mill times sixty percent of the installed capacity of each unit times the number of hours in the taxable period. All electrical generating plants that begin construction or ~~completed~~ complete repowering after June 30, 1994, are exempt from eighty-five percent of the tax imposed by this subsection for five years from the date of the first taxable production or from the date of the first taxable production after repowering from the plant. The board of county commissioners may, by resolution, grant to the operator of an electrical generating plant located within the county ~~which begins construction after June 30, 1994,~~ partial or complete exemption from the remaining fifteen percent of the tax imposed by this subsection for a period not exceeding five years from the date of the first taxable production or from the date of the first taxable production after repowering from the plant. If a board of county commissioners grants a partial or complete exemption for a specific coal conversion facility under this subsection, the provisions of subsection 2 of section 57-60-14 do not apply as that subsection relates to revenue from the specific coal conversion facility for which the partial or complete exemption has been granted. Notwithstanding section 57-60-14, any tax collected from a plant subject to the exemption provided by this subsection must be allocated entirely to the county for allocation as provided in section 57-60-15. If a unit is incapable of generating electricity for eighteen consecutive months, the tax on that unit for taxable periods beginning after the eighteenth month

must be reduced by the ratio that the cost of repair of the unit bears to the original cost of the unit. This reduced rate remains in effect until the unit is capable of generating electricity.

3. For electrical generating plants, in addition to the tax imposed by subsection 2, there is a tax at the rate of twenty-five one-hundredths of one mill on each kilowatt hour of electricity produced for the purpose of sale. For all electrical generating plants that begin construction or ~~completed complete~~ repowering ~~after June 30, 1994~~, the production from the plants is exempt from the tax imposed by this subsection for five years from the date of the first taxable production or from the date of the first taxable production after repowering from the plant.
5.
  - a. For all coal conversion facilities, other than electrical generating plants, the production from the facilities is exempt from eighty-five percent of the tax imposed by this section for a period of five years from the date of first taxable production from the facility ~~or for a period of five years from April 20, 1987, whichever is later~~. The operator of each facility applying for exemption under this subsection shall certify to the tax commissioner the date of first taxable 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 fifteen percent of tax imposed by this section for a period not exceeding five years from the date of the first taxable 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 must be allocated entirely to the county for allocation as provided in section 57-60-15. ~~If a board of county commissioners grants a partial or complete exemption for a specific coal conversion facility under this subsection, the provisions of subsection 2 of section 57-60-14 do not apply as that subsection relates to revenue from the specific coal conversion facility for which the partial or complete exemption has been granted.~~

**SECTION 5. AMENDMENT.** Section 57-60-06 of the North Dakota Century Code is amended and reenacted as follows:

**57-60-06. Property classified and exempted from ad valorem taxes - In lieu of certain other taxes - Credit for certain other taxes.** Each coal conversion facility must be classified as personal property and is exempt from all ad valorem taxes except for taxes on the land on which such facility is located. The taxes imposed by this chapter are in lieu of ad valorem taxes on the property so classified as personal property. The taxes imposed by this chapter are also in lieu of those taxes imposed by chapters 57-33 and 57-33.1 on cooperative electrical generating plants that qualify as coal conversion facilities as defined in this chapter for gross receipts derived from the operation of such plants ~~on or after July 1, 1975~~. ~~Each cooperative electrical generating plant shall receive a credit against the taxes imposed by this chapter for any taxes imposed pursuant to chapters 57-33 and 57-33.1 and payable after July 1, 1975. Such credit applies only for such taxes actually paid and must be applied against the taxes imposed by this chapter in the years in which such payments are made.~~



**SECTION 6. AMENDMENT.** Section 57-60-07 of the North Dakota Century Code is amended and reenacted as follows:

**57-60-07. Powers of commissioner.** The commissioner has power to require any person subject to the taxes imposed by this chapter to furnish any additional information deemed by the commissioner to be necessary for the purpose of correctly computing the amount of the tax, and to examine the books, records, and files of such person, and has power to conduct hearings and compel the attendance of witnesses, the production of books, records, and papers of any person, and full authority to make any investigation or hold any inquest deemed necessary to a full and complete disclosure of the true facts as to the amount of production or generation from any coal ~~development~~ conversion plant, and as to the rendition thereof for taxing purposes.

<sup>281</sup> **SECTION 7. AMENDMENT.** Subsection 1 of section 57-60-14 of the North Dakota Century Code is amended and reenacted as follows:

1. The state treasurer shall no less than quarterly allocate all moneys received from all coal conversion facilities in each county pursuant to the provisions of this chapter ~~and moneys received for those taxes for which a credit is allowed pursuant to section 57-60-06, notwithstanding the provisions of section 57-33.1-08,~~ fifteen percent to the county and eighty-five percent to the state general fund, except moneys received from the tax imposed by subsection 3 of section 57-60-02 and through December 31, 2009, the first \$41,666.67 each month from the tax imposed by subsections 1 and 4 of section 57-60-02, which must be deposited in the state general fund.

**SECTION 8. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 30, 2007  
Filed March 30, 2007

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<sup>281</sup> Section 57-60-14 was also amended by section 1 of House Bill No. 1093, chapter 546.

**CHAPTER 531****HOUSE BILL NO. 1074**

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

**SPECIAL EVENT VENDOR REPORTING**

AN ACT to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to the information reporting responsibilities of special events promoters or organizers under the sales tax laws; to amend and reenact subsection 1 of section 57-39.2-23 of the North Dakota Century Code, relating to the confidentiality of sales and use tax information; and to provide a penalty.

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

**SECTION 1.** A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

**Responsibilities of special events promoters - Penalty.**

1. A promoter or organizer of a special event at which ten or more special event vendors participate shall, within twenty days following a special event, provide to the tax commissioner a list identifying each participating special event vendor. The list must be in the form and manner prescribed by the tax commissioner and must contain the name and sales tax permit number of each special vendor. Records must be retained by the promoter or organizer to the same extent as all transactions involving sales or use tax as provided in section 57-39.2-10. For purposes of this section:
  - a. "Promoter" or "organizer" means a person or entity that organizes or promotes a special event that results in the rental, occupation, or use of a structure, lot, tract of land, motor vehicle, sample or display case, table, or any other similar items for the provision of displays, promotional activities, or sale of tangible personal property or services by special event vendors.
  - b. "Special event" means an entertainment, amusement, recreation, or marketing event that occurs at a single location on a recurring or irregular basis and where sales, displays, or promotional activities occur. Special events include auto shows, boat shows, gun shows, sport shows, knife shows, home shows, craft shows, flea markets, carnivals, circuses, bazaars, fairs, and art or other merchandise displays or exhibits.
  - c. "Special event vendor" means a person or entity making sales, providing displays, or otherwise engaging in promotional activities at a special event.
2. A special event does not include an event that is organized for the exclusive benefit of a nonprofit organization if all of the net proceeds of

the retail sales of all vendors at the event inure to the benefit of a nonprofit organization.

3. A promoter or organizer of a special event who fails or refuses to comply with this section may be subject to a penalty of two hundred fifty dollars per event, which amount may be waived by the tax commissioner for good cause shown.

**SECTION 2. AMENDMENT.** Subsection 1 of section 57-39.2-23 of the North Dakota Century Code is amended and reenacted as follows:

1. The commissioner or ~~a person~~ an individual having an administrative duty under this chapter may not divulge or make known in any manner whatever the business affairs, operations, or information obtained from any person under any reporting requirement of this chapter, or by an investigation of any person, corporation, or limited liability company in the discharge of official duty, or the amount or sources of income, profits, losses, expenditures, or any particulars set forth or disclosed in any return, or permit any return or copy or any book containing any abstract of particulars to be seen or examined by any ~~person~~ individual.

Approved March 7, 2007

Filed March 8, 2007

**CHAPTER 532****SENATE BILL NO. 2381**

(Senators Cook, Stenehjem, Urlacher)  
(Representatives Berg, Drovdal, Weiler)

**REIMBURSEMENT FOR SALES TAX COLLECTIONS**

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 reimbursements to retailers for administrative expenses associated with sales and use tax collection and remittance; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-39.2-12.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.2-12.1. Deduction to reimburse retailer for administrative expenses.**

1. A retailer ~~who pays the tax due required to report and pay monthly under section 57-39.2-12 or chapter 57-39.4 within the time limitations prescribed~~ may deduct and retain one and one-half percent of the tax due. A retailer that is a remote seller that, through a certified service provider or by other means, pays the tax due within the time limitations under section 57-39.2-12 or chapter 57-39.4 on taxable sales made before July 1, 2007, may deduct and retain one and one-half percent of the tax due or such lower percentage as agreed in the compensation or monetary allowance agreement as approved by the streamlined sales and use tax governing board. The limitation of subsection 2 does not apply to the amount a retailer who is a remote seller is allowed to deduct and retain under this subsection. For purposes of this subsection, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales tax purposes. The aggregate of deductions allowed by this section and section 57-40.2-07.1 may not exceed eighty-five dollars per month. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period.
2. The aggregate of deductions allowed by this section and section 57-40.2-07.1 may not exceed eighty-five dollars per month for permit holders filing on a monthly basis for each business location which has been issued a sales or use tax permit by the commissioner. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies only to tax remitted by certified service providers on behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may

not receive additional compensation under subsection 1 or 3 for the same period.

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. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.
4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.
5. Compensation may not be deducted and retained under this section unless the tax due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or chapter 57-39.4.
6. The deduction allowed retailers or certified service providers by this section is to reimburse retailers directly or indirectly for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the tax commissioner upon request.

**SECTION 2. AMENDMENT.** Section 57-40.2-07.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.2-07.1. Deduction to reimburse retailer for administrative expenses.**

1. A retailer who pays the tax due required to report and pay monthly under section 57-40.2-07 or chapter 57-39.4 within the time limitations prescribed may deduct and retain one and one-half percent of the tax due. A retailer that is a remote seller that, through a certified service provider or by other means, pays the tax due within the time limitations under section 57-39.2-12 or chapter 57-39.4 on taxable sales made before July 1, 2007, may deduct and retain one and one-half percent of the tax due or such lower percentage as agreed in the compensation or monetary allowance agreement as approved by the streamlined sales and use tax governing board. The limitation of subsection 2 does not apply to the amount a retailer who is a remote seller is allowed to deduct and retain under this subsection. For purposes of this subsection, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales tax purposes. The aggregate of deductions allowed by this section and section 57-39.2-12.1 may not exceed eighty-five dollars per month. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period.

2. The aggregate of deductions allowed by this section and section 57-39.2-12.1 may not exceed eighty-five dollars per month for permit holders filing on a monthly basis for each business location which has been issued a sales or use tax permit by the commissioner. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies only to tax remitted by certified service providers on behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 3 for the same period.
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. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.
4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.
5. Compensation may not be deducted and retained under this section unless the tax due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or chapter 57-39.4.
6. The deduction allowed retailers or certified service providers by this section is to reimburse retailers directly or indirectly for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the tax commissioner upon request.

**SECTION 3. EFFECTIVE DATE.** This Act becomes effective July 1, 2007.

Approved March 9, 2007  
Filed March 12, 2007

**CHAPTER 533****SENATE BILL NO. 2086**

(Transportation Committee)

(At the request of the Tax Commissioner)

**MOTOR VEHICLE EXCISE TAX LOSS STATEMENTS**

AN ACT to amend and reenact subsection 5 of section 57-40.3-01 of the North Dakota Century Code, relating to use of total loss statements.

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

**SECTION 1. AMENDMENT.** Subsection 5 of section 57-40.3-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Purchase price" means the total amount paid for the motor vehicle whether received in money or otherwise; provided, however, that when a motor vehicle or other tangible personal property that will be subject to a sales or use tax imposed by chapter 57-39.2 or 57-40.2 when sold or used is taken in trade as a credit or as part payment on a motor vehicle taxable under this chapter, the credit or trade-in value allowed by the person selling the motor vehicle shall be deducted from the total selling price to establish the purchase price of the vehicle being sold and the trade-in allowance allowed by the seller on a motor vehicle accepted as a trade-in shall constitute the purchase price of a motor vehicle accepted as a trade-in. If a motor vehicle is purchased by an owner who has had a motor vehicle stolen or totally destroyed, a credit or trade-in credit shall be allowed against one or more replacement motor vehicle purchases in a cumulative amount not to exceed the total amount the purchaser has been compensated by an insurance company for the loss but not to exceed the total amount of motor vehicle excise tax paid. The purchaser must provide the director of the department of transportation with a notarized statement from the insurance company within three years from the date of issuance verifying the fact that the original vehicle was a total loss and stating the amount compensated by the insurance company for the loss. The statement from the insurance company must accompany the purchaser's application for a certificate of title for the replacement vehicle. If the full amount of the credit under this subsection has not been used, the director of the department of transportation shall record on the face of the notarized statement the necessary information to identify the partial use of the credit and shall retain a copy and return the original to the purchaser. In instances in which a licensed motor vehicle dealer places into the dealer's service a new vehicle for the purpose of renting, leasing, or dealership utility service, the reasonable value of the vehicle replaced shall be included as trade-in value provided the vehicle replaced has been subject to motor vehicle excise tax under section 57-40.3-02 and if the new vehicle is properly registered and licensed. "Purchase price" when the motor vehicle is acquired by gift or by any other transfer for a nominal or no monetary consideration also includes the average value of similar motor vehicles, established by standards and guides as determined by the director of the department of transportation. "Purchase price" when a motor vehicle is manufactured

by a person who registers it under the laws of this state means the manufactured cost of such motor vehicle and manufactured cost means the amount expended for materials, labor, and other properly allocable costs of manufacture except that, in the absence of actual expenditures for the manufacture of a part or all of the motor vehicle, manufactured cost means the reasonable value of the completed motor vehicle.

Approved March 5, 2007  
Filed March 6, 2007



**CHAPTER 534****HOUSE BILL NO. 1160**

(Representatives Uglem, Belter, DeKrey, Kerzman, Vigesaa)  
(Senator Mathern)

**AMBULANCE EXCISE TAX EXEMPTION**

AN ACT to create and enact a new subsection to section 57-40.3-04 and a new subsection to section 57-40.5-03 of the North Dakota Century Code, relating to motor vehicle excise tax and aircraft excise tax exemptions for ambulances and air ambulances purchased by emergency medical services operations; and to declare an emergency.

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

<sup>282</sup> **SECTION 1.** A new subsection to section 57-40.3-04 of the North Dakota Century Code is created and enacted as follows:

A motor vehicle originally manufactured for use as an ambulance, when purchased by the operator of an emergency medical services operation licensed under chapter 23-27.

**SECTION 2.** A new subsection to section 57-40.5-03 of the North Dakota Century Code is created and enacted as follows:

Aircraft for use as an air ambulance, when purchased by the operator of an emergency medical services operation licensed under chapter 23-27.

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

Approved April 18, 2007  
Filed April 18, 2007

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<sup>282</sup> Section 57-40.3-04 was also amended by section 4 of House Bill No. 1393, chapter 513, section 7 of Senate Bill No. 2101, chapter 450, and section 3 of Senate Bill No. 2113, chapter 337.

**CHAPTER 535****SENATE BILL NO. 2169**

(Senators Wardner, Taylor)  
(Representatives Carlson, Delmore)

**EMERGENCY SERVICES COMMUNICATION FEES**

AN ACT to amend and reenact sections 57-40.6-01, 57-40.6-02, 57-40.6-03, 57-40.6-04, 57-40.6-05, 57-40.6-06, 57-40.6-08, 57-40.6-10, and 57-40.6-12 of the North Dakota Century Code, relating to the application, collection, and use of emergency services communication fees; to repeal section 57-40.6-11 of the North Dakota Century Code, relating to a report on all standards and guidelines; and to provide for a legislative council study.

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

**SECTION 1. AMENDMENT.** Section 57-40.6-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.6-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Active prepaid wireless service" means a prepaid wireless service that has been used by the customer during the month to complete a telephone call for which the customer's card or balance was decremented.
2. "Assessed communications service" means a software service, communication connection, cable or broadband transport facilities, or a combination of these facilities, between a billed retail end user and a service provider's network that provides the end user, upon dialing 911, access to a public safety answering point through a permissible interconnection to the dedicated 911 network. The term includes telephone exchange access service, wireless service, active prepaid wireless service, and voice over internet protocol service.
3. "Automated notification system" means that portion of a telecommunications system that provides rapid notice of emergency situations to the public.
- ~~2.~~ 4. "Communication connection" means a telephone access line, wireless access line, unique voice over internet protocol service connection, or functional equivalent uniquely identifiable by a number, internet address, or other designation.
5. "Emergency services communication system" means a statewide, countywide, or citywide radio system, land lines communication network, wireless service network, or enhanced 911 (E911) 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.

- ~~3-~~ 6. "FCC order" means federal communications commission order 94-102 [961 Federal Register 40348] and any other FCC order that affects the provision of wireless enhanced 911 service.
7. "Prepaid wireless service" means wireless service that is activated in advance by payment for a finite dollar amount of service or for a finite set of minutes that terminates either upon use by a customer and delivery by the wireless provider of an agreed-upon amount of service corresponding to the total dollar amount paid in advance or within a certain period of time following the initial purchase or activation, unless the customer makes additional payments.
- ~~4-~~ 8. "Public safety answering point" or "PSAP" means a communications facility or combination of facilities operated on a twenty-four-hour basis which first receives 911 calls from persons in a 911 service area and which, as appropriate, may directly dispatch public safety services or extend, transfer, or relay 911 calls to appropriate public safety agencies.
- ~~5-~~ 9. "Subscriber service address" means, for purposes of wire line subscribers, the address where the telephone subscriber's wire line telephone device is used and, for purposes of wireless subscribers, the place of primary use, as that term is defined in ~~the Mobile Telecommunications Sourcing Act [Pub. L. 106-252; 4 U.S.C. 124(b)]~~ section 57-34.1-02.
- ~~6-~~ 10. "Telephone access line" means the principal access to the telephone company's switched network, including an outward dialed trunk or access register.
- ~~7-~~ 11. "Telephone exchange access service" means service to any wire line telephone access line identified by a unique telephone number that provides local wire line access to the telecommunications network to a service subscriber and which enables the subscriber to access the emergency services communications system by dialing the digits 9-1-1 on the subscriber's telephone device.
- ~~8-~~ 12. "Unpublished" means information that is not published or available from directory assistance.
13. "Voice over internet protocol service" means a service that enables real-time two-way voice communications; requires a broadband connection from the user's location; requires internet protocol-compatible customer premises equipment; and permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.
- ~~9-~~ 14. "Wireless access line" means each active wireless and prepaid wireless telephone number assigned to a commercial mobile radio service subscriber, including end users of resellers.
- ~~10-~~ 15. "Wireless enhanced 911 service" means the service required to be provided by wireless service providers pursuant to the FCC order.
- ~~11-~~ 16. "Wireless service" means commercial mobile radio service as defined in 47 U.S.C. 332(d)(1) and includes:

- a. Services commonly referred to as wireless; and
- b. Services provided by any wireless real-time two-way voice communication device, including radio-telephone communications used in:
  - (1) Cellular telephone service;
  - (2) Personal communications service; or
  - (3) The functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, personal communications service, or a network radio access line.

42- 17. "Wireless service provider" means any entity authorized by the federal communications commission to provide wireless service within the state of North Dakota.

**SECTION 2. AMENDMENT.** Section 57-40.6-02 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.6-02. Authority of counties or cities to impose fee on telephone exchange access service and on wireless assessed communications service - Procedure.** The governing body of a county or city may impose a fee on ~~the use of telephone exchange access service and on the use of wireless service~~ all assessed communications services in accordance with the following requirements:

1. The governing body shall adopt a resolution that proposes the adoption of the fee permitted under this section. The resolution must specify an effective date for the fee which is no more than two years before the expected implementation date of the emergency services communication system to be funded by the fee. The resolution must include a provision for submitting the proposed fee to the electors of the county or city before the imposition of the fee is effective. The resolution must specify a fee that does not exceed one dollar per month per ~~telephone access line and per wireless access line~~ communication connection and must be applied equally upon all assessed communications services.
2. The question of the adoption of the fee must be submitted on a ballot on which the ballot title of the proposition includes the maximum monthly rate of the proposed fee authorized under subsection 1. The question of the adoption of the fee may be submitted to electors at a general, primary, or special election or at a school district election if the boundaries of the school district are coterminous with the boundaries of the governing body adopting the resolution proposing the adoption of the fee. The fee 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 fee for an initial six-year period.
3. If the electors have approved imposition of a fee under this section before July 1, 2005, and the governing body of the city or county has not implemented that fee by June 30, 2005, the approval by the electors remains valid until the fee is implemented and, upon implementation,

the fee may be imposed for a six-year period and is subject to reimposition under subsection 4.

4. Any political subdivision that desires to increase the fee, subject to the limitations in subsection 1, before the end of the six-year term, must use the same ballot procedure originally used to authorize the fee. The new ballot question may apply to only the proposed increase and not to the original amount or the original term. If the increase is approved, the new amount may be collected for the balance of the original six-year term. If the fee authorized by this section is approved by the electors, the fee may be reimposed for six additional years without resubmitting the question to the electors.
5. In any geographic area, only one political subdivision may impose the fee and imposition must be based on the subscriber service address.
6. In the interest of public safety, where the subscriber's telephone exchange access service boundary and the boundary of the political subdivision imposing the fee do not coincide, and where all of the political subdivisions within the subscriber's telephone exchange access service boundary have not complied with subsection 1, and where a majority of the E911 subscribers within the subscriber's telephone exchange access service boundary have voted for the fee, a telephone exchange access service subscriber whose subscriber service address is outside the political subdivision may receive E911 services by signing a contract agreement with the political subdivision providing the emergency services communication system. The telephone exchange access service provider may collect an additional fee, equal in amount to the basic fee on those subscribers within the exchange boundary. The additional fee amounts collected must be remitted as provided in this chapter.
7. A fee imposed under this section before August 1, ~~2004~~, may be 2007, on telephone exchange access service is extended to all wireless service at each subscriber service address within the area in which the fee is imposed only if that extension of the fee has been approved by a majority vote of the governing body of the city or county upon at least thirty days' prior notice in the official newspaper of the city or county that the governing body will consider the issue or by majority vote of the electors of the city or county voting on the question upon placement of the question on the ballot by the governing body of the city or county at a regular or special city or county election assessed communications services.

**SECTION 3. AMENDMENT.** Section 57-40.6-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.6-03. Payment of fee by telephone exchange access service and wireless assessed communications service subscriber or customer.** The resolution imposing a fee under section 57-40.6-02 must include a requirement that the telephone exchange access service provider and the wireless assessed communications service provider shall collect the fee from the subscriber or customer of the service. In its

1. For prepaid wireless service, the provider shall remit the monthly fee authorized by section 57-40.6-02 based either upon each active prepaid

wireless telephone associated with this state for each active prepaid wireless telephone customer that has a sufficient positive balance as of the last day of each month or upon a two percent assessment on the gross revenue received from the sale of prepaid wireless services each month. The provider shall remit the fee in a manner consistent with the provider's existing operating or technological abilities, including by customer address, location associated with the wireless telephone number, or reasonable allocation method based upon other relevant data. The fee amount or an equivalent number of minutes may be reduced from the prepaid customer's account. However, collection of the fee in the manner of a reduction of value or minutes from the prepaid customer's account does not constitute a reduction in the sales price for purposes of taxes that are collected at the point of sale.

2. For assessed communications service that involves a monthly billing, in the billing statement or invoice to the subscriber, the telephone exchange access service provider and the wireless service provider shall state the amount of the fee separately.

**SECTION 4. AMENDMENT.** Section 57-40.6-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.6-04. Fee collection procedure.** A resolution adopted under section 57-40.6-02 must include adequate procedures for the administration and collection of the fee, including a provision for reimbursement to the telephone exchange access service provider and the wireless service provider for the actual costs of administration in collection of the fee. An assessed communications service provider may retain the actual costs of administration in collection of the fee, not to exceed five percent of the fee collected. The resolution must also include a provision that the fee proceeds must be paid by the telephone exchange access service provider and the wireless assessed communications service provider within thirty days after it is collected from the subscriber or customer unless the provider has fewer than ten subscribers or customers in a jurisdiction, in which case the provider may pay the proceeds quarterly.

**SECTION 5. AMENDMENT.** Section 57-40.6-05 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.6-05. Restriction on use of fee proceeds.** The governing body may not use the proceeds of the fee imposed under section 57-40.6-02 solely for any purpose other than as provided in this section.

1. Within twenty-four months after the extension of the fee to wireless access lines under subsection 6 of section 57-40.6-02, the governing body shall request enhanced 911 service from all wireless carriers providing service as of that date within the governing body's jurisdiction.
2. The governing body shall hold the portion of the revenues from the fee on wireless service unexpended in a separate fund until such time as the governing body makes a request for wireless enhanced 911 service or adopts a statement certifying that it is capable of receiving and utilizing wireless enhanced 911 service, whichever is earlier, provided that those revenues may not be expended until the agreements required under subsection 3 have been executed.

3. ~~The governing body or its designee shall enter into agreements directly with each wireless service provider for only that provider's services necessary to implement, maintain, and operate wireless enhanced 911 service as provided by law. A governing body may not reimburse a wireless service provider for tower construction or for the extension of a wireless service provider's infrastructure which is not directly related to providing wireless enhanced 911 service.~~
4. ~~Revenues in excess of the obligations incurred under the agreements specified by this section, as determined on a monthly basis, may only be used for implementing, maintaining, or operating the emergency services communication system and may enter into agreements to effectuate the same.~~
5. ~~The governing body or its designee shall deposit the fee proceeds in a separate fund and keep records to show all expenditures for wireless service providers separately from expenditures for telephone exchange access service providers from the fee proceeds.~~

**SECTION 6. AMENDMENT.** Section 57-40.6-06 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.6-06. Data base.** Any telephone exchange access service provider providing emergency 911 service shall provide current customer names, addresses, and telephone numbers to each 911 coordinator, ~~the coordinator's designee,~~ or public safety answering point within each 911 system. Information provided under this section must be provided in accordance with the transactional record disclosure requirements of the federal Electronics Communications Privacy Act of 1986, 18 U.S.C. 2703(c)(1)(B)(iii), and in a manner that identifies the names and telephone numbers that are unpublished. The provider shall report data base information regarding new service or a change of service within two business days of the actual service change unless a longer period is permitted by the jurisdiction. The provider shall report data base information regarding dropped service at least monthly.

**SECTION 7. AMENDMENT.** Section 57-40.6-08 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.6-08. Emergency services communication system, automated notification system, or emergency instructions - Liability.**

1. A public agency, public safety agency, ~~telephone exchange access service provider, wireless service~~ assessed communications service provider, or person that provides access to an emergency services communication system or an automated notification system, or any officer, agent, or employee of any public agency, public safety agency, ~~telephone exchange access service provider, wireless~~ assessed communications service provider, or person is not liable for any civil damages as a result of any act or omission except willful and wanton misconduct or gross negligence in connection with developing, adopting, operating, or implementing any plan or system as provided under this chapter.
2. A person who gives emergency instructions through a system as provided under this chapter, to persons rendering services in an emergency at another location, or any person following such instructions in rendering such services, is not liable for any civil

damages as a result of issuing or following the instructions, unless issuing or following the instructions constitutes willful and wanton misconduct or gross negligence.

3. This section does not waive, limit, or modify any existing immunity or other defense of the state or any political subdivision, or any of its agencies, departments, commissions, boards, officers, or employees, nor does it create any claim for relief against any of these entities.

**SECTION 8. AMENDMENT.** Section 57-40.6-10 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.6-10. Standards and guidelines.**

1. The governing body of the local governmental unit with jurisdiction over an emergency 911 telephone system shall be or shall designate a governing committee of the emergency 911 telephone system which shall:
  - a. Designate a 911 coordinator.
  - b. Enter written agreements with participating organizations and agencies.
  - c. Designate lines of authority.
  - d. Provide for a written plan for rural addressing, if applicable, which has been coordinated with the local postal authorities. After January 1, 1993, a rural plan must conform to the modified burkle addressing plan. A plan in use before this date does not have to conform with the modified burkle addressing plan. If implemented, all rural addressing signs must comply with the manual on uniform traffic control devices standards.
  - e. Provide for an update of the emergency 911 telephone system's data base annually by obtaining current records from the appropriate telecommunications company.
  - f. Define a records retention plan for all printed and recorded records in accordance with jurisdictional requirements.
  - g. Encourage that coin-free dialing is available for 911 calls.
  - h. Define a mechanism to differentiate between emergency 911 telephone calls from other calls.
  - i. Provide for written operating procedures.
  - j. Require the public safety answering point that initially receives an emergency call to be responsible for handling that call. If a transfer of an emergency call is made to a secondary public safety answering point, the initial public safety answering point may not disconnect from the three-way call unless mutually agreed upon by the two public safety answering point dispatchers. Upon this agreement, the secondary public safety answering point becomes responsible for the call.



- k. Beginning June 1, 2002, ensure that the closest available emergency medical service is dispatched to the scene of medical emergencies regardless of city, county, or district boundaries. The state department of health shall provide emergency 911 telephone systems with necessary geographical information to assist in the implementation of this subdivision.
    - l. Ensure that fee proceeds collected under this chapter are expended in accordance with guidelines developed pursuant to section 57-40.6-12 and implement an accounting system sufficient to meet the requirements of section 57-40.6-05.
2. The governing committee may:
  - a. Require appropriate liability protection.
  - b. Create a user advisory board.
  - c. Conduct an annual statistical evaluation of services.
  - d. Publish an annual financial report in the official county newspaper.
3. An emergency 911 telephone system must access and dispatch the following services:
  - a. Law enforcement.
  - b. Fire service.
  - c. Emergency medical service.
4. An emergency 911 telephone system may access and dispatch the following services:
  - a. Poison control.
  - b. Suicide prevention.
  - c. Emergency management.
  - d. Any other related service in subsection 3 or 4.
5. The governing committee of an emergency 911 telephone system shall provide that that system:
  - a. Provides twenty-four-hour, seven-day-a-week coverage.
  - b. Dispatches and communicates with service identified in subsection 3.
  - c. Records all incoming 911 calls and related radio and telephone communications.
  - d. Provides alternate measures in the event of an emergency 911 telephone system failure, including an alternate public safety answering point seven-digit number.

- e. Ensures an adequate grade of service that is statistically based by population to assure access to an emergency 911 telephone system.
  - f. Does not accept one-way call-in alarms or devices.
  - g. Provides access to an emergency 911 telephone system through specialized telecommunications equipment as defined under section 54-44.8-01.
6. An emergency 911 telephone system may:
- a. Locate the emergency caller utilizing electronic equipment.
  - b. Provide a mechanism for investigating false or prank calls.
7. An emergency 911 telephone system must include at least one public safety answering point.
8. A cellular 911 call must be routed to the appropriate 911 public safety answering point.
9. An emergency 911 telephone call must be answered by a dispatcher who has completed training through an association of public safety communications officials course or equivalent course. An emergency 911 dispatch center is required to offer emergency medical dispatch instructions on all emergency medical calls. Prearrival instructions must be offered by a dispatcher who has completed an emergency medical dispatch course approved by the division of emergency health services. Prearrival medical instructions may be given through a mutual aid agreement.

**SECTION 9. AMENDMENT.** Section 57-40.6-12 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.6-12. Reports of coordination of public safety answering points coverage Emergency services communications coordinating committee - Membership - Duties.**

1. The governing body of a city or county, which adopted a fee on ~~telephone exchange access service and wireless service~~ assessed communications services under this chapter, shall make an annual report of the income, expenditures, and status of its emergency services communication system. The annual report must be submitted to the ~~division of state radio and to the public safety answering points emergency services communications~~ coordinating committee. The committee is composed of three members, one appointed by the North Dakota 911 association, one appointed by the North Dakota association of counties, and one appointed by the adjutant general to represent the division of state radio.
2. The ~~public safety answering points coordinating~~ committee shall:
  - a. Recommend to the legislative council changes to the operating standards for emergency services communications, including training or certification standards for dispatchers;

- b. Develop guidelines regarding the allowable uses of the fee revenue collected under this chapter;
    - c. Request, receive, and compile reports from each governing body on the use of the proceeds of the fee imposed under this chapter, analyze the reports with respect to the guidelines, file its report with the legislative council by November first of each even-numbered year regarding the use of the fee revenue, and recommend to the legislative assembly the appropriate maximum fee allowed by section 57-40.6-02; and
    - d. Periodically evaluate chapter 57-40.6 and recommend changes to the legislative council.
  3. The committee may initiate and administer statewide agreements among the governing bodies of the local governmental units with jurisdiction over an emergency 911 telephone system to coordinate the procurement of equipment and services, fund the research, administration, and activities of the committee, and contract for the necessary staff support for committee activities.

**SECTION 10. REPEAL.** Section 57-40.6-11 of the North Dakota Century Code is repealed.

**SECTION 11. LEGISLATIVE COUNCIL STUDY - E911 FEES PAID ON PREPAID WIRELESS.** The legislative council shall consider studying, during the 2007-08 interim, the feasibility and desirability of collecting emergency 911 fees on the sale of prepaid wireless services. The study must include an evaluation of methods by which E911 fees may be collected from end users and purchasers of prepaid wireless services on an equitable, efficient, competitively neutral, and nondiscriminatory basis and a review of whether the collection of fees on prepaid wireless services would constitute an efficient use of public funds, given the technological and practical considerations of collecting the fees. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Approved April 9, 2007  
Filed April 10, 2007

**CHAPTER 536****SENATE BILL NO. 2087**

(Transportation Committee)  
(At the request of the Tax Commissioner)

**E85 AND BIODIESEL DEFINITIONS**

AN ACT to create and enact a new subsection to section 57-43.1-01 and a new subsection to section 57-43.2-01 of the North Dakota Century Code, relating to the definitions of E85 and biodiesel for motor vehicles fuels and special fuels tax purposes; and to provide an effective date.

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

**SECTION 1.** A new subsection to section 57-43.1-01 of the North Dakota Century Code is created and enacted as follows:

"E85 fuel" means a petroleum product that is a blend of agriculturally derived denatured ethanol and gasoline or natural gasoline that typically contains eighty-five percent ethanol by volume, but at a minimum must contain sixty percent ethanol by volume. E85 produced for use as a motor fuel must comply with ASTM specification D 5798-96.

**SECTION 2.** A new subsection to section 57-43.2-01 of the North Dakota Century Code is created and enacted as follows:

"Biodiesel, designated B100" means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oil or animal fats that meets ASTM specification D 6751.

**SECTION 3. EFFECTIVE DATE.** This Act becomes effective on July 1, 2007.

Approved March 7, 2007  
Filed March 8, 2007

**CHAPTER 537****HOUSE BILL NO. 1138**

(Representatives Vigesaa, Drovdal, Haas, Metcalf, Uglen)  
(Senator Klein)

**EMERGENCY SERVICES VEHICLE TAX REFUNDS**

AN ACT to create and enact a new section to chapter 57-43.1, a new section to chapter 57-43.2, and a new section to chapter 57-43.3 of the North Dakota Century Code, relating to motor vehicle excise tax, special fuels tax, and aviation fuel tax refunds for fuels purchased by emergency medical services operations; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 57-43.1 of the North Dakota Century Code is created and enacted as follows:

**Refund to emergency medical services operation.** Upon application to the commissioner, the operator of an emergency medical services operation licensed under chapter 23-27 is entitled to a refund of taxes paid under this chapter for motor vehicle fuel purchased and used by the emergency medical services operation. The refund provided for in this section is not subject to reduction for deposit in the agricultural fuel tax fund, the ethanol production incentive fund, or the agricultural research fund.

**SECTION 2.** A new section to chapter 57-43.2 of the North Dakota Century Code is created and enacted as follows:

**Refund to emergency medical services operation.** Upon application to the commissioner, the operator of an emergency medical services operation licensed under chapter 23-27 is entitled to a refund of taxes paid under this chapter for special fuel purchased and used by the emergency medical services operation.

**SECTION 3.** A new section to chapter 57-43.3 of the North Dakota Century Code is created and enacted as follows:

**Refund to emergency medical services operation.** Upon application to the commissioner, the operator of an emergency medical services operation licensed under chapter 23-27 is entitled to a refund of taxes paid under this chapter for aviation fuel purchased and used by the emergency medical services operation.

**SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2007.

Approved April 23, 2007

Filed April 24, 2007

**CHAPTER 538****SENATE BILL NO. 2089**

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

**MOTOR VEHICLE FUEL TAX REFUND CLAIM FORMS**

AN ACT to amend and reenact section 57-43.1-04 of the North Dakota Century Code, relating to the form of a claim for refund of motor vehicle fuels tax paid.

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

**SECTION 1. AMENDMENT.** Section 57-43.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-43.1-04. Form of claim for refund.** A refund claim must be on a form furnished by the commissioner and must have a written declaration by the claimant that it is made under the penalties of perjury. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return. The refund claim must ~~state indicate~~ that the motor vehicle fuel was used or is to be used by the claimant other than in a licensed motor vehicle, the purpose or type of project for which the motor vehicle fuel was used, and such other information as the commissioner requires. The original invoices or sales tickets proving the purchase of motor vehicle fuel on which the refund is claimed must be attached to the refund claim. The invoices or sales tickets must include the seller's name and address, the date the fuel was purchased, the type of product, the number of gallons [liters] of motor vehicle fuel purchased, ~~the state tax as a separate item or a statement that the state tax is included in the price,~~ and the name of the claimant. If the original invoices or sales tickets are lost, the claimant may substitute duplicate invoices or sales tickets plus a separate affidavit on forms prescribed by the commissioner. A certified history of purchases detailing required information may be accepted by the commissioner in lieu of original sales invoices or sales tickets. A supplier, distributor, or retailer is prohibited from preparing a refund claim for the consumer.

Approved March 2, 2007  
Filed March 2, 2007

**CHAPTER 539****SENATE BILL NO. 2085**

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

**FUELS TAX REPORTING REQUIREMENTS**

AN ACT to amend and reenact subsection 2 of section 57-43.1-16, subsection 1 of section 57-43.1-26, subsection 2 of section 57-43.2-11, subsection 1 of section 57-43.2-21, and subsection 1 of section 57-43.3-26 of the North Dakota Century Code, relating to monthly reporting requirements for motor vehicle fuel and special fuel refiners, suppliers, distributors, importers, and exporters and motor vehicle fuel, special fuel, and aviation fuel inventory gain or loss reporting requirements.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 57-43.1-16 of the North Dakota Century Code is amended and reenacted as follows:

2. The report to the commissioner must be on a form prescribed and furnished by the commissioner. The commissioner may require that all or part of the report be submitted in an electronic format approved by the commissioner, provided the person required to file the report is able to use an electronic format. The report must contain the information as required by the commissioner, including:
  - a. A detailed schedule of motor vehicle fuel refined, purchased, imported, and exported.
  - b. A detailed schedule of motor vehicle fuel sold to a person eligible to purchase the motor vehicle fuel without the tax imposed by this chapter.
  - c. A detailed schedule of motor vehicle fuel sold tax-paid for resale, including a list of persons who purchased the motor vehicle fuel for resale.
  - d. The total number of gallons of motor vehicle fuel sold and used subject to the tax imposed by this chapter.
  - e. The number of gallons of motor vehicle fuel sold tax-exempt to a qualified consumer.
  - f. The number of gallons of motor vehicle fuel in physical inventory at the beginning of the calendar month, the number of gallons in physical inventory at the close of the calendar month, and any gains or losses experienced.

**SECTION 2. AMENDMENT.** Subsection 1 of section 57-43.1-26 of the North Dakota Century Code is amended and reenacted as follows:

1. A supplier or distributor shall take a physical inventory reading of all motor vehicle fuel located in a terminal, underground tank, aboveground tank, railcar, storage tank of a truck, and the storage tank of a bulk delivery truck on a ~~regular~~ monthly basis and shall report the physical readings, inventory gains, and inventory losses to the commissioner ~~in increments not to exceed a twelve-month period~~. The inventory reconciliation must include motor vehicle fuel at retail locations and motor vehicle fuel stored in a barrel, drum, or other receptacle.

**SECTION 3. AMENDMENT.** Subsection 2 of section 57-43.2-11 of the North Dakota Century Code is amended and reenacted as follows:

2. The report to the commissioner must be on a form prescribed and furnished by the commissioner. The commissioner may require that all or part of the report be submitted in an electronic format approved by the commissioner, provided the person required to file the report is able to use an electronic format. The report must contain such information as required by the commissioner, including:
  - a. A detailed schedule of special fuel refined, purchased, imported, and exported.
  - b. A detailed schedule of special fuel sold to a person eligible to purchase the special fuel without the tax imposed by this chapter.
  - c. A detailed schedule of special fuel sold tax-paid to a person for resale, including a list of persons who purchased the special fuel for resale.
  - d. The total number of gallons of special fuel sold and used subject to tax imposed by this chapter.
  - e. The number of gallons of special fuel sold tax-exempt to a qualified consumer.
  - f. The number of gallons of special fuel in physical inventory at the beginning of the calendar month, the number of gallons in physical inventory at the close of the calendar month, and any gains or losses experienced.

**SECTION 4. AMENDMENT.** Subsection 1 of section 57-43.2-21 of the North Dakota Century Code is amended and reenacted as follows:

1. A supplier or distributor shall take a physical inventory reading of all special fuel located in a terminal, underground tank, aboveground tank, railcar, storage tank of a truck, and the storage tank of a bulk delivery truck on a ~~regular~~ monthly basis and shall report the physical readings, inventory gains, and inventory losses to the commissioner ~~in increments not to exceed a twelve-month period~~. The inventory reconciliation must include special fuel at retail locations and special fuel stored in a barrel, drum, or other receptacle.

**SECTION 5. AMENDMENT.** Subsection 1 of section 57-43.3-26 of the North Dakota Century Code is amended and reenacted as follows:



1. A supplier or distributor shall take a physical inventory reading of all aviation fuel located in a terminal, underground tank, aboveground tank, railcar, storage tank of a truck, and the storage tank of a bulk delivery truck on a ~~regular~~ monthly basis and shall report the physical readings, inventory gains, and inventory losses to the commissioner ~~in increments not to exceed a twelve-month period~~. The inventory reconciliation must include aviation fuel at retail locations and aviation fuel stored in a barrel, drum, or other receptacle. The supplier or distributor with retail locations is exempt from the provisions of subsection 2.

Approved March 2, 2007  
Filed March 2, 2007

**CHAPTER 540****HOUSE BILL NO. 1348**

(Representatives Wall, Belter, Damschen, Williams)  
(Senators Anderson, Wanzek)

**SPECIAL FUELS SPECIAL EXCISE TAX**

AN ACT to amend and reenact subsection 1 of section 57-43.2-03 of the North Dakota Century Code, relating to the special fuels special excise tax; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 57-43.2-03 of the North Dakota Century Code, as effective after June 30, 2007, is amended and reenacted as follows:

1. Except as otherwise provided in this chapter, a special excise tax of two percent is imposed on all sales of propane and a tax of four cents per gallon is imposed on all sales of diesel fuel and other special fuels, which are exempted from the tax imposed under section 57-43.2-02.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2007.

Approved April 11, 2007  
Filed April 13, 2007

**CHAPTER 541****HOUSE BILL NO. 1279**

(Representatives Kempenich, Headland, Solberg, Weiler)  
(Senators Krauter, Wanzek)

**SHALLOW GAS TAX EXEMPTION EXTENDED**

AN ACT to amend and reenact sections 57-51-01 and 57-51-02.4 of the North Dakota Century Code, relating to eliminating the expiration date of the shallow gas gross production tax exemption; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-51-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-51-01. (Effective through June 30, 2007) Definitions.** As used in this chapter:

1. "Barrel of oil" means forty-two United States gallons of two hundred thirty-one cubic inches per gallon computed at a temperature of sixty degrees Fahrenheit [158.99 liters computed at a temperature of 15.56 degrees Celsius].
2. "Commissioner" means the state tax commissioner.
3. "Field" means the geographic area underlaid by one or more pools, as defined by the industrial commission.
4. "Gas" means natural gas and casinghead gas.
5. "Oil" means petroleum, crude oil, mineral oil, and casinghead gasoline.
6. "Person" includes partnership, corporation, limited liability company, association, fiduciary, trustee, and any combination of individuals.
7. "Posted price" means the price specified in publicly available posted price bulletins or other public notices, net of any adjustments for quality and location.
8. "Shallow gas" means gas produced from a gas well completed in or producing from a shallow gas zone, as certified to the tax commissioner by the industrial commission.
9. "Shallow gas zone" means a strata or formation, including lignite or coal strata or seam, located above the depth of five thousand feet [1524 meters] below the surface, or located more than five thousand feet [1524 meters] below the surface but above the top of the Rierdon formation, from which gas is or may be produced.
10. "Transportation costs" means the costs incurred for transporting oil established in accordance with the first applicable of the following methods:

- a. Actual costs incurred under the arm's-length contract between the producer and the transporter of oil.
- b. An applicable common carrier rate established and filed with the North Dakota public service commission, or the appropriate federal jurisdictional agency.
- c. When no common carrier rate would be applicable, the transportation costs are those reasonable costs associated with the actual operating and maintenance expenses, overhead costs directly attributable and allocable to the operation and maintenance, and either depreciation and a return on undepreciated capital investment, or a cost equal to a return on the investment in the transportation system, as determined by the commissioner.

**(Effective after June 30, 2007) Definitions.** As used in this chapter:

1. "Barrel of oil" means forty-two United States gallons of two hundred thirty-one cubic inches per gallon computed at a temperature of sixty degrees Fahrenheit [158.89 liters computed at a temperature of 15.56 degrees Celsius].
2. "Commissioner" means the state tax commissioner.
3. "Field" means the geographic area underlaid by one or more pools, as defined by the industrial commission.
4. "Gas" means natural gas and casinghead gas.
5. "Oil" means petroleum, crude oil, mineral oil, and casinghead gasoline.
6. "Person" includes partnership, corporation, limited liability company, association, fiduciary, trustee, and any combination of individuals.
7. "Posted price" means the price specified in publicly available posted price bulletins or other public notices, net of any adjustments for quality and location.
8. "Transportation costs" means the costs incurred for transporting oil established in accordance with the first applicable of the following methods:
  - a. Actual costs incurred under the arm's-length contract between the producer and the transporter of oil.
  - b. An applicable common carrier rate established and filed with the North Dakota public service commission, or the appropriate federal jurisdictional agency.
  - c. When no common carrier rate would be applicable, the transportation costs are those reasonable costs associated with the actual operating and maintenance expenses, overhead costs directly attributable and allocable to the operation and maintenance, and either depreciation and a return on undepreciated capital investment, or a cost equal to a return on the

~~investment in the transportation system, as determined by the commissioner.~~

**SECTION 2. AMENDMENT.** Section 57-51-02.4 of the North Dakota Century Code is amended and reenacted as follows:

**57-51-02.4. (Effective through June 30, 2007) Shallow gas - Gross production tax exemption.** Shallow gas produced during the first twenty-four months of production from and after the date of first sales of gas from a well completed or recompleted in a shallow gas zone after June 30, 2003, is exempted from the gross production tax levied under section 57-51-02.2. Gas produced from such a well during testing prior to well completion or connection to a pipeline is also exempt from the gross production tax.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2007.

Approved April 5, 2007  
Filed April 5, 2007

**CHAPTER 542****HOUSE BILL NO. 1044**

(Representatives Drovdal, Grande, Kempenich)  
(Senators Lyson, Warner)

**OIL TAX REVENUE ALLOCATION**

AN ACT to amend and reenact section 57-51-15 of the North Dakota Century Code, relating to allocation of oil and gas gross production tax revenues; to provide for application; and to provide an effective date.

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

<sup>283</sup> **SECTION 1. AMENDMENT.** Section 57-51-15 of the North Dakota Century Code is amended and reenacted as follows:

**57-51-15. (Effective through June 30, 2007) Apportionment and use of proceeds of tax.** The gross production tax provided for in this chapter must be apportioned as follows:

1. First the tax revenue collected under this chapter equal to one percent of the gross value at the well of the oil and one-fifth of the tax on gas must be deposited with the state treasurer, who shall credit thirty-three and one-third percent of the revenues to the oil and gas impact grant fund, but not in an amount exceeding five million dollars per biennium, including any amounts otherwise appropriated for oil and gas impact grants for the biennium by the legislative assembly, and who shall credit the remaining revenues to the state general fund.
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 must 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 must 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 must be allocated twenty-five percent to that county and seventy-five percent to the state general fund. However, the amount to which each county is entitled pursuant to this subsection must 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.

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<sup>283</sup> Section 57-51-15 was also amended by section 1 of Senate Bill No. 2178, chapter 543.

- 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.
- 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.

Any allocations for any county pursuant to this subsection which exceed the applicable limitation for that county as provided in subdivisions a through c must be deposited instead in the state's general fund.

- 3. Forty-five percent of all revenues as may by the legislative assembly be allocated to any county hereunder must be credited by the county treasurer to the county general fund. Thirty-five percent of all revenues allocated to any county must be apportioned by the county treasurer no less than quarterly to school districts within the county on the average daily attendance distribution basis, as certified to the county treasurer by the county superintendent of schools. However, no school district may receive in any single academic year an amount under this subsection greater than the county average per student cost multiplied by seventy percent, then multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Provided, however, that in any county in which the average daily attendance or the school census, whichever is greater, is fewer than four hundred, the county is entitled to one hundred twenty percent of the county average per student cost multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Once this level has been reached through distributions under this subsection, all excess funds to which the school district would be entitled as part of its thirty-five percent share must be deposited instead in the county general fund. The county superintendent of schools of each oil-producing county shall certify to the county treasurer by July first of each year the amount to which each school district is limited pursuant to this subsection. As used in this subsection, "average daily attendance" means the average daily attendance for the school year immediately preceding the certification by the county superintendent of schools required by this subsection. Twenty percent of all revenues allocated to any county hereunder must be paid no less than quarterly by the state treasurer to the incorporated cities of the county based upon the population of each incorporated city according to the last official decennial federal census. However, no city may receive in any fiscal year an amount under this subsection greater than five hundred dollars per capita. Once this level has been reached through distributions under this subsection, all excess funds to which any city would be entitled except for this limitation must be deposited instead in that county's general fund. Provided, however, that in determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of determining the per capita limitation in this section must be increased by adding to the population of the city as determined by the last official decennial federal census a number to be determined as follows:

- a. Seasonal employees of state and federal tourist facilities within five miles [8.05 kilometers] of the city must be included by adding the months all such employees were employed during the prior year and dividing by twelve.
- b. Seasonal employees of all private tourist facilities within the city and seasonal employees employed by the city must be included by adding the months all such employees were employed during the prior year and dividing by twelve.
- c. The number of visitors to the tourist attraction within the city or within five miles [8.05 kilometers] of the city which draws the largest number of visitors annually must be included by taking the smaller of either of the following:
  - (1) The total number of visitors to that tourist attraction the prior year divided by three hundred sixty-five; or
  - (2) Four hundred twenty.

**(Effective after June 30, 2007) Apportionment and use of proceeds of tax.** The gross production tax provided for in this chapter must be apportioned as follows:

1. First the tax revenue collected under this chapter equal to one percent of the gross value at the well of the oil and one-fifth of the tax on gas must be deposited with the state treasurer who shall credit thirty-three and one-third percent of the revenues to the oil and gas impact grant fund, but not in an amount exceeding six million dollars per biennium, including any amounts otherwise appropriated for oil and gas impact grants for the biennium by the legislative assembly, and who shall credit the remaining revenues to the state general fund.
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 must be allocated to that county. The second one million dollars of annual revenue after the deduction for the amount provided for in subsection 1 from oil and gas produced in any county must be allocated seventy-five percent to that county and twenty-five percent to the state general fund. The ~~second~~ third 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 must 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~~ three million dollars from oil or gas produced in any county must be allocated twenty-five percent to that county and seventy-five percent to the state general fund. However, the amount to which each county is entitled pursuant to this subsection must 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.



- 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.
- 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.

Any allocations for any county pursuant to this subsection which exceed the applicable limitation for that county as provided in subdivisions a through c must be deposited instead in the state's general fund.

3. Forty-five percent of all revenues as may be by the legislative assembly be allocated to any county hereunder must be credited by the county treasurer to the county general fund. Thirty-five percent of all revenues allocated to any county must be apportioned by the county treasurer no less than quarterly to school districts within the county on the average daily attendance distribution basis, as certified to the county treasurer by the county superintendent of schools. However, no school district may receive in any single academic year an amount under this subsection greater than the county average per student cost multiplied by seventy percent, then multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Provided, however, that in any county in which the average daily attendance or the school census, whichever is greater, is fewer than four hundred, the county is entitled to one hundred twenty percent of the county average per student cost multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Once this level has been reached through distributions under this subsection, all excess funds to which the school district would be entitled as part of its thirty-five percent share must be deposited instead in the county general fund. The county superintendent of schools of each oil-producing county shall certify to the county treasurer by July first of each year the amount to which each school district is limited pursuant to this subsection. As used in this subsection, "average daily attendance" means the average daily attendance for the school year immediately preceding the certification by the county superintendent of schools required by this subsection. Twenty percent of all revenues allocated to any county hereunder must be paid no less than quarterly by the state treasurer to the incorporated cities of the county based upon the population of each incorporated city according to the last official decennial federal census. However, no city may receive in any fiscal year an amount under this subsection greater than five hundred dollars per capita. Once this level has been reached through distributions under this subsection, all excess funds to which any city would be entitled except for this limitation must be deposited instead in that county's general fund. Provided, however, that in determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of determining the per capita limitation in this section must be increased by adding to the population of the city as determined by the last official decennial federal census a number to be determined as follows:

- a. Seasonal employees of state and federal tourist facilities within five miles [8.05 kilometers] of the city must be included by adding the months all such employees were employed during the prior year and dividing by twelve.
- b. Seasonal employees of all private tourist facilities within the city and seasonal employees employed by the city must be included by adding the months all such employees were employed during the prior year and dividing by twelve.
- c. The number of visitors to the tourist attraction within the city or within five miles [8.05 kilometers] of the city which draws the largest number of visitors annually must be included by taking the smaller of either of the following:
  - (1) The total number of visitors to that tourist attraction the prior year divided by three hundred sixty-five; or
  - (2) Four hundred twenty.

**SECTION 2. APPLICATION.** Notwithstanding the provisions of section 57-51.1-07.2, the director of the budget may not consider the enactment of this Act to be an amendment of the distribution formula under chapter 57-51 and the director of the budget may not adjust the seventy-one million dollar amount under section 57-51.1-07.2 due to enactment of this Act.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for allocation of gross production taxes occurring after July 31, 2008.

Approved May 1, 2007  
Filed May 2, 2007

**CHAPTER 543****SENATE BILL NO. 2178**

(Senators Bowman, Lyson, O'Connell)

(Representatives S. Meyer, Skarphol)

**OIL AND GAS TAX APPORTIONMENT**

AN ACT to amend and reenact subsections 2 and 3 of section 57-51-15 of the North Dakota Century Code, relating to apportionment of oil and gas gross production tax revenues; to repeal section 57-51.1-07.2 of the North Dakota Century Code, relating to the permanent oil tax trust fund; to provide for a legislative council study; to provide for application; and to provide an effective date.

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

<sup>284</sup> **SECTION 1. AMENDMENT.** Subsections 2 and 3 of section 57-51-15 of the North Dakota Century Code, as effective after June 30, 2007, are amended and reenacted 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 must 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 must 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 must be allocated twenty-five percent to that county and seventy-five percent to the state general fund. However, the amount to which each county is entitled pursuant to this subsection must 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; however, a county may receive up to four million nine hundred thousand dollars under this subdivision for each fiscal year if during that fiscal year the county levies a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal-aid road, and county road purposes. Any amount received by a county exceeding three million nine hundred thousand dollars under this subdivision is not subject to allocation under subsection 3 but must be credited by the county treasurer to the county general fund.

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<sup>284</sup> Section 57-51-15 was also amended by section 1 of House Bill No. 1044, chapter 542.

- 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; however, a county may receive up to five million one hundred thousand dollars under this subdivision for each fiscal year if during that fiscal year the county levies a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal-aid road, and county road purposes. Any amount received by a county exceeding four million one hundred thousand dollars under this subdivision is not subject to allocation under subsection 3 but must be credited by the county treasurer to the county general fund.
- 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; however, a county may receive up to five million six hundred thousand dollars under this subdivision for each fiscal year if during that fiscal year the county levies a total of ten mills or more for combined levies for county road and bridge, farm-to-market and federal-aid road, and county road purposes. Any amount received by a county exceeding four million six hundred thousand dollars under this subdivision is not subject to allocation under subsection 3 but must be credited by the county treasurer to the county general fund.

Any allocations for any county pursuant to this subsection which exceed the applicable limitation for that county as provided in subdivisions a through c must be deposited instead in the state's general fund.

3. Forty-five percent of all revenues as may by the legislative assembly be allocated to any county hereunder must be credited by the county treasurer to the county general fund. Thirty-five percent of all revenues allocated to any county must be apportioned by the county treasurer no less than quarterly to school districts within the county on the average daily attendance distribution basis, as certified to the county treasurer by the county superintendent of schools. However, no school district may receive in any single academic year an amount under this subsection greater than the county average per student cost multiplied by seventy percent, then multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Provided, however, that in any county in which the average daily attendance or the school census, whichever is greater, is fewer than four hundred, the county is entitled to one hundred twenty percent of the county average per student cost multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Once this level has been reached through distributions under this subsection, all excess funds to which the school district would be entitled as part of its thirty-five percent share must be deposited instead in the county general fund. The county superintendent of schools of each oil-producing county shall certify to the county treasurer by July first of each year the amount to which each school district is limited pursuant to this subsection. As used in this subsection, "average daily attendance" means the average daily attendance for the school year immediately preceding the certification by the county superintendent of schools required by this subsection. Twenty percent of all revenues allocated to any county hereunder must

be paid no less than quarterly by the state treasurer to the incorporated cities of the county based upon the population of each incorporated city according to the last official decennial federal census. ~~However, no city may receive in any fiscal year an amount under this subsection greater than five hundred dollars per capita.~~ Once this level has been reached through distributions under this subsection, all excess funds to which any city would be entitled except for this limitation must be deposited instead in that county's general fund. Provided, however, that in determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of determining the per capita limitation in this section must be increased by adding to the population of the city as determined by the last official decennial federal census a number to be determined as follows:

- a. Seasonal employees of state and federal tourist facilities within five miles [8.05 kilometers] of the city must be included by adding the months all such employees were employed during the prior year and dividing by twelve.
- b. Seasonal employees of all private tourist facilities within the city and seasonal employees employed by the city must be included by adding the months all such employees were employed during the prior year and dividing by twelve.
- c. The number of visitors to the tourist attraction within the city or within five miles [8.05 kilometers] of the city which draws the largest number of visitors annually must be included by taking the smaller of either of the following:
  - (1) The total number of visitors to that tourist attraction the prior year divided by three hundred sixty-five; or
  - (2) Four hundred twenty.

**SECTION 2. REPEAL.** Section 57-51.1-07.2 of the North Dakota Century Code is repealed.

**SECTION 3. LEGISLATIVE COUNCIL STUDY.** The legislative council shall study, during the 2007-08 interim, allocation of oil and gas tax revenues to or for the benefit of political subdivisions with emphasis on determining whether allocations sufficiently address oil and gas development infrastructure impact to political subdivisions. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 4. APPLICATION.** Notwithstanding the provisions of section 57-51.1-07.2, the director of the budget may not consider the enactment of this Act to be an amendment of the distribution formula under chapter 57-51 and the director of the budget may not adjust the seventy-one million dollar amount under section 57-51.1-07.2 due to enactment of this Act.

**SECTION 5. EFFECTIVE DATE.** Sections 1 and 4 of this Act are effective for allocations of oil and gas gross production tax revenues occurring after June 30, 2007. Section 2 of this Act becomes effective on the date that the proposed new section to article X of the Constitution of North Dakota as contained in House Concurrent Resolution No. 3045, as agreed to by the sixtieth legislative assembly and approved by the electors, becomes effective.

Approved May 2, 2007  
Filed May 3, 2007

**CHAPTER 544****SENATE BILL NO. 2397**

(Senators Wardner, Lyson, O'Connell)  
(Representatives Belter, Onstad, Wieland)

**OIL EXTRACTION TAX RATE REDUCTION**

AN ACT to create and enact a new subsection to section 57-51.1-03 of the North Dakota Century Code, relating to an oil extraction tax rate reduction for oil produced from new horizontal wells drilled and completed in the Bakken formation; and to provide an effective date.

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

**SECTION 1.** A new subsection to section 57-51.1-03 of the North Dakota Century Code is created and enacted as follows:

The first seventy-five thousand barrels of oil produced during the first eighteen months after completion, from a horizontal well drilled and completed in the Bakken formation after June 30, 2007, and before July 1, 2008, is subject to a reduced tax rate of two percent of the gross value at the well of the oil extracted under this chapter. A well eligible for a reduced tax rate under this subsection is eligible for the exemption for horizontal wells under subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty-four months after completion.

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective on July 1, 2007.

Approved April 9, 2007  
Filed April 10, 2007

**CHAPTER 545****SENATE BILL NO. 2419**

(Senator Stenehjem)

(Representative Berg)

(Approved by the Delayed Bills Committee)

**TRIBAL OIL AND GAS TAX AGREEMENTS**

AN ACT to create and enact chapter 57-51.2 of the North Dakota Century Code, relating to agreements with the Three Affiliated Tribes to share revenue from state taxes on oil and gas production within the boundaries of the Fort Berthold Reservation; to provide an effective date; to provide an expiration date; and to declare an emergency.

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

**SECTION 1.** Chapter 57-51.2 of the North Dakota Century Code is created and enacted as follows:

**57-51.2-01. Authority to enter agreements.** The governor, in consultation with the tax commissioner, may enter agreements with the Three Affiliated Tribes relating to taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Reservation.

**57-51.2-02. Agreement requirements.** An agreement under this chapter is subject to the following:

1. The only taxes subject to agreement are the state's oil and gas gross production and oil extraction taxes attributable to production from wells located within the exterior boundaries of the Fort Berthold Reservation.
2. The state's oil and gas gross production tax under chapter 57-51 must apply to all wells located within the Fort Berthold Reservation.
3. The state's oil extraction tax under chapter 57-51.1 as applied to oil and gas production attributable to trust lands on the Fort Berthold Reservation may not exceed six and one-half percent but may be reduced through negotiation between the governor and the Three Affiliated Tribes.
4. Any exemptions for oil and gas production from trust lands under chapters 57-51 and 57-51.1 do not apply to production within the boundaries of the Fort Berthold Reservation except as otherwise provided in the agreement.
5. The allocation of revenue from oil and gas production taxes on the Fort Berthold Reservation must be as follows:
  - a. Production attributable to trust lands. All revenues and exemptions from all oil and gas gross production and oil extraction taxes attributable to production from trust lands on the Fort Berthold Reservation must be evenly divided between the tribe and the state.



- b. All other production. The tribe must receive twenty percent of the total oil and gas gross production taxes collected from all production attributable to nontrust lands on the Fort Berthold Reservation in lieu of the application of the Three Affiliated Tribes' fees and taxes related to production on such lands. The state must receive the remainder.
    - c. The state's share of the revenue as divided in subdivisions a and b is subject to distribution among political subdivisions as provided in chapters 57-51 and 57-51.1.
- 6. An oil or gas well that is drilled and completed during the time of an agreement under this chapter must be subject to the terms of the agreement for the life of the well.
- 7. The Three Affiliated Tribes must agree not to impose a tribal tax or any fee on future production of oil and gas on the Fort Berthold Reservation during the term of the agreement.
- 8. To address situations in which the tax commissioner refunds taxes to a taxpayer, the agreement must allow the tax commissioner to offset future distributions to the tribe.
- 9. The tax commissioner must retain authority to administer and enforce chapters 57-51 and 57-51.1 as applied to wells subject to any agreement authorized by this chapter.
- 10. An oil or gas well that is drilled and completed during the time an agreement under this chapter is in effect is subject to state regulatory provisions for the life of the well in addition to any other applicable regulatory provisions.
- 11. The federal district court for the western division of North Dakota is the venue for any dispute arising from a revenue-sharing agreement between the state and the Three Affiliated Tribes.

**57-51.2-03. Statutory inconsistencies superseded.** This chapter supersedes any inconsistent provisions of chapters 57-51 and 57-51.1 and any inconsistent provisions of state law relating to regulatory provisions and state law relating to oil and gas exploration and production and administration of those provisions.

**57-51.2-04. Reports.** After entering an agreement under this chapter the governor shall file a report with the legislative council describing the agreement's negotiations and terms and thereafter shall file biennial reports with the legislative council describing the agreement's implementation and any difficulties in its implementation.

**57-51.2-05. Inapplicability of chapter 54-40.2.** Chapter 54-40.2 does not apply to any agreement entered under chapter 57-51.2.

**SECTION 2. EFFECTIVE DATE - EXPIRATION DATE.** This Act is effective for oil production after June 30, 2007. This Act is ineffective after June 30, 2009, unless by that date the governor's office notifies the tax commissioner and legislative council that an agreement has been entered with the Three Affiliated Tribes under chapter 57-51.2.

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

Approved May 4, 2007  
Filed May 4, 2007

**CHAPTER 546****HOUSE BILL NO. 1093**

(Finance and Taxation Committee)  
(At the request of the Industrial Commission)

**COAL CONVERSION TAX ALLOCATION**

AN ACT to amend and reenact subsection 1 of section 57-60-14 of the North Dakota Century Code, relating to allocation of the privilege tax on coal conversion facilities to the lignite research fund; to provide legislative intent; and to provide an expiration date.

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

<sup>285</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 57-60-14 of the North Dakota Century Code is amended and reenacted as follows:

1. The state treasurer shall no less than quarterly allocate all moneys received from all coal conversion facilities in each county pursuant to the provisions of this chapter and moneys received for those taxes for which a credit is allowed pursuant to section 57-60-06, notwithstanding the provisions of section 57-33.1-08, fifteen percent to the county and eighty-five percent to the state general fund, except moneys received from the tax imposed by subsection 3 of section 57-60-02 and through December 31, 2009, the first \$41,666.67 each month from the tax imposed by subsections 1 and 4 of section 57-60-02, which must be deposited in the state general fund. From July 1, 2007, through June 30, 2009, three and one-half percent of all funds allocated to the state general fund pursuant to this chapter must be allocated to the lignite research fund and after June 30, 2009, five percent of all funds allocated to the state general fund pursuant to this chapter must be allocated to the lignite research fund, for the purposes defined in section 57-61-01.5.

**SECTION 2. LEGISLATIVE INTENT - LIGNITE LITIGATION.** It is the intent of the legislative assembly that \$500,000 of the amount allocated to the lignite research fund in section 1 of this Act is to be used to pay for fees associated with lignite litigation that may be brought by the state to protect and promote the continued development of lignite resources. If activities associated with the litigation are not initiated by January 1, 2009, the \$500,000 must be returned to the general fund.

**SECTION 3. EXPIRATION DATE.** Except as otherwise provided in this Act, this Act is effective through July 31, 2018, and after that date is ineffective.

Approved April 30, 2007  
Filed May 1, 2007

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<sup>285</sup> Section 57-60-14 was also amended by section 7 of House Bill No. 1365, chapter 530.

# TOWNSHIPS

## CHAPTER 547

### HOUSE BILL NO. 1392

(Representatives D. Johnson, Damschen, Haas)  
(Senators Erbele, Klein, Triplett)

## TOWNSHIP ZONING VIOLATION PENALTY

AN ACT to amend and reenact subsection 2 of section 58-03-14 of the North Dakota Century Code, relating to the penalty for violation of zoning regulations in townships.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 58-03-14 of the North Dakota Century Code is amended and reenacted as follows:

2. If after reasonable notice and opportunity for hearing by the board of township supervisors, a property owner fails to bring a building or structure or the use of land owned by that person into compliance with a regulation or restriction made under sections 58-03-11 through 58-03-15, in addition to any other remedies, the board of township supervisors may impose a civil penalty of up to ~~five hundred two thousand~~ two thousand dollars annually against the property owner and the property. The board of township supervisors may also assess the property owner for all costs of the township in bringing the property into compliance or in instituting and prosecuting any appropriate action or proceeding under this section. Any civil penalty or assessment of costs, or both, against a property owner constitute a lien on the property and must be charged against the property and become a part of the taxes against the property for the ensuing year and must be collected in the same manner as other real estate taxes are collected and placed to the credit of the township.

Approved April 10, 2007

Filed April 11, 2007

**CHAPTER 548****HOUSE BILL NO. 1386**

(Representatives Herbel, Onstad)  
(Senator Warner)

**TOWNSHIP OFFICER COMPENSATION**

AN ACT to amend and reenact sections 58-06-02, 58-07-01, and 58-08-01 of the North Dakota Century Code, relating to the compensation of township officers.

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

**SECTION 1. AMENDMENT.** Section 58-06-02 of the North Dakota Century Code is amended and reenacted as follows:

**58-06-02. Compensation of supervisors.** A township supervisor is entitled to receive as compensation for services twenty dollars a day for each day necessarily devoted to the work of a supervisor's office not exceeding ~~six hundred~~ one thousand dollars in a calendar year. Additional compensation over ~~six hundred~~ one thousand dollars may be provided for reimbursement of expenses and mileage at a rate not exceeding the allowable mileage rate accepted by the United States internal revenue service for each mile [1.61 kilometers] necessarily traveled in the performance of a supervisor's duties.

**SECTION 2. AMENDMENT.** Section 58-07-01 of the North Dakota Century Code is amended and reenacted as follows:

**58-07-01. Compensation of clerk.** The township clerk is entitled to receive as compensation for services twenty dollars a day for each day necessarily devoted to the work of the clerk's office not exceeding ~~six hundred~~ one thousand dollars in a calendar year. Additional compensation over ~~six hundred~~ one thousand dollars may be provided for reimbursement of expenses and mileage at a rate not exceeding the allowable mileage rate accepted by the United States internal revenue service for each mile [1.61 kilometers] necessarily traveled in the performance of the clerk's duties. In those townships in which the offices of township clerk and treasurer have been merged, the person elected to fill the new office is entitled to receive compensation as township clerk only.

**SECTION 3. AMENDMENT.** Section 58-08-01 of the North Dakota Century Code is amended and reenacted as follows:

**58-08-01. Compensation of treasurer.** The township treasurer is entitled to receive as compensation for services twenty dollars a day for each day necessarily devoted to the work of the treasurer's office not exceeding ~~six hundred~~ one thousand dollars in a calendar year. Additional compensation over ~~six hundred~~ one thousand dollars may be provided for reimbursement of expenses and mileage at a rate not exceeding the allowable mileage rate accepted by the United States internal revenue service for each mile [1.61 kilometers] necessarily traveled in the performance of the

treasurer's duties. The township treasurer may not be allowed a percentage on the balance turned over to the treasurer's successor in office.

Approved March 23, 2007

Filed March 23, 2007

# TRUSTS, USES, AND POWERS

## CHAPTER 549

### HOUSE BILL NO. 1034

(Legislative Council)  
(Judiciary Committee)

### UNIFORM TRUST CODE

AN ACT to create and enact a new section to chapter 59-08 and chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, 59-19, and 59-20 of the North Dakota Century Code, relating to adoption of the uniform trust code and charitable trusts; to amend and reenact section 3-02-05, subsection 24 of section 10-33-21, section 10-33-105, subsection 7 of section 23-20.3-03.1, sections 23-21.1-03, 30.1-18-03, 30.1-20-13, 30.1-29-17, 30.1-32-03, 30.1-34-02, 38-10-12, and 38-13-01, and subsection 2 of section 59-08-01 of the North Dakota Century Code, relating to trusts; to repeal chapters 30.1-32, 30.1-33, 30.1-34, 59-01, 59-02, 59-03, 59-04, and 59-05 of the North Dakota Century Code, relating to trusts; and to provide for retroactive application.

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

**SECTION 1. AMENDMENT.** Section 3-02-05 of the North Dakota Century Code is amended and reenacted as follows:

**3-02-05. General authority limited.** An authority expressed in general terms, however broad, does not authorize an agent:

1. ~~To~~ to act in ~~his~~ the agent's own name unless ~~it~~ doing so is the usual course of business to ~~be~~ do;
2. ~~To~~ define the scope of ~~his~~ the agent's agency; or
3. ~~To~~ to do any act ~~which that~~ that a trustee is forbidden to do ~~by the provisions of sections 59-01-09 to 59-01-19, inclusive under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19.~~ by the provisions of sections 59-01-09 to 59-01-19, inclusive under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19.

**SECTION 2. AMENDMENT.** Subsection 24 of section 10-33-21 of the North Dakota Century Code is amended and reenacted as follows:

24. Except when the trust instrument prescribes otherwise, a corporation may invest trust property or its proceeds in accordance with ~~sections 59-02-08.1 through 59-02-08.14~~ sections 59-02-08.1 through 59-02-08.14 chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19.

**SECTION 3. AMENDMENT.** Section 10-33-105 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-105. Distribution of assets.**

1. In performing the duties under section 10-33-100, the board, or the officers acting under the direction of the board, shall distribute the assets of the corporation in the following order of priority:
  - a. Distribution of assets received and held for a special use or purpose under subsection 2;
  - b. Payment of costs and expenses of the dissolution proceedings, including attorney's fees and disbursements;
  - c. Payment of debts, obligations, and liabilities of the corporation;
  - d. Distribution of assets pursuant to articles or bylaws of the dissolving corporation or the rules or canons of another organization under subsection 3; and
  - e. Distribution of remaining assets under subsection 4.
2. Assets of the corporation may not be diverted from the uses and purposes for which the assets have been received and held or from the uses and purposes expressed or intended by the original donor.
3. When the articles or bylaws of the dissolving corporation, or the rules or canons of another organization by which the dissolving corporation is bound, provide for a particular distribution of the assets of the dissolving corporation, the assets must be distributed accordingly.
4. The distribution of assets held for or devoted to a charitable or public use or purpose is subject to section ~~59-02-22~~ 59-20-01.

**SECTION 4. AMENDMENT.** Subsection 7 of section 23-20.3-03.1 of the North Dakota Century Code is amended and reenacted as follows:

7. Before agreeing to any institutional controls or responsibility exemptions, the department may require insurance coverage or other financial assurance for any additional environmental monitoring or remediation that may become necessary on the property after the site-specific responsibility exemptions and institutional controls are established, and must require such insurance coverage or other financial assurance when the projected cost of an active monitoring or remediation program exceeds five hundred thousand dollars. The department may enter a joint agreement with affected political subdivisions, state or federal agencies, property owners, lenders, the administrator of the petroleum tank release compensation fund, or any responsible or potentially responsible party concerning payment for or funding of any insurance coverage or other financial assurance for any additional environmental monitoring or remediation that may become necessary on contaminated or affected properties. Such agreements do not waive the liability limitations that apply by law to the state, to state agencies, or to political subdivisions, except up to the amounts, and subject to the terms, conditions, and limitations, of any insurance policy or any financial assurance fund created by the joint agreement of the parties under this subsection. Any financial assurance fund must



comply with chapters ~~59-01, 59-02, 59-03, and 59-04~~, 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 and be managed for the benefit of the affected persons or community, but liability of the fund may not exceed the amount deposited with the fund.

**SECTION 5. AMENDMENT.** Section 23-21.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**23-21.1-03. Creation of perpetual care fund.**

1. Any organization subject to this chapter which is organized or commences business in this state and desires to operate as a perpetual care cemetery, before selling or disposing of any interment space or lots, shall establish a minimum perpetual care and maintenance guarantee fund of twenty-five thousand dollars in cash, except that the minimum perpetual care and maintenance guarantee fund for organizations in operation on July 1, 1963, must be five thousand dollars. The perpetual care and maintenance guarantee fund must be permanently set aside in trust to be administered under the jurisdiction of the district court of the county wherein the cemetery is located. The district court shall have jurisdiction over the approval of trustees, reports and accounting of trustees, amount of surety bond required, and investment of funds as provided by ~~chapter 59-04~~ chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 relating to the administration of trust estates. Only the income from such fund may be used for the care and maintenance of the cemetery for which it was established. All such organizations shall submit at least annually, to the district court, such reports as are required. The clerks of each of the district courts shall transmit copies of all reports, and rules and regulations enacted by the organization, to the state department of health and the commissioner of financial institutions.
2. To continue to operate as a perpetual care cemetery, any such organization shall set aside and deposit in the perpetual care fund not less than the following amounts for lots of interment space thereafter sold or disposed of:
  4. a. A minimum of twenty percent of the gross selling price with a minimum of twenty dollars for each adult space, whichever is the greater.
  2. b. A minimum of twenty percent of the gross selling price for each child's space with a minimum of five dollars for each space up to forty-two inches [1006.8 millimeters] in length or ten dollars for each space up to sixty inches [1524 millimeters] in length, whichever is the greater.
  3. c. A minimum of twenty percent of the gross selling price with a minimum of one hundred dollars for each space or crypt in a mausoleum, whichever is the greater, except a mausoleum located in a cemetery covered by a perpetual care fund which consists of at least twenty percent of the proceeds received by the cemetery from the sale of cemetery lots, in which event, the perpetual care fund for the public or community mausoleum itself shall contain a minimum of twenty percent of the cost of the construction of such public or community mausoleum.

4. d. A minimum of twenty percent of the gross selling price with a minimum of ten dollars for each inurnment niche in a columbarium, except a columbarium located in a cemetery covered by a perpetual care fund which consists of at least twenty percent of the proceeds received by the cemetery from the sale of cemetery lots, in which event, the perpetual care fund for the public or community columbarium itself shall contain a minimum of twenty percent of the cost of the construction of such public or community columbarium.
  5. e. A minimum of twenty percent of the gross selling price with a minimum of one hundred dollars, whichever is the greater, for each interment space in crypt gardens or any other structure or device by whatever name, established or constructed wholly or partially above the natural surface of the ground, for the interment of any dead human body.
3. There is no required perpetual care fund deposit on spaces provided without charge for paupers and infants.

**SECTION 6. AMENDMENT.** Section 30.1-18-03 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-18-03. (3-703) General duties - Relation and liability to persons interested in estate - Standing to sue.**

1. A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by ~~section 30.1-34-02~~. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this title, and as expeditiously and efficiently as is consistent with the best interests of the estate. The personal representative shall use the authority conferred upon the personal representative by this title, the terms of the will, if any, and any order in proceedings to which the personal representative is party for the best interests of successors to the estate.
2. A personal representative may not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will authorizes a personal representative to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, authorizes the personal representative to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning the personal representative's appointment or fitness to continue, or a supervised administration proceeding. This section does not affect the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants whose claims have been allowed, the surviving spouse, any minor and dependent children, and any pretermitted child of the decedent as described in this title.
3. Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this

state at the decedent's death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as the decedent had immediately prior to death.

**SECTION 7. AMENDMENT.** Section 30.1-20-13 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-20-13. (3-913) Distributions to trustee.**

1. Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered provides for registration and that the trustee inform the beneficiaries ~~as provided in section 30.1-34-03.~~
2. If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if the personal representative apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and the personal representative may withhold distribution until the court has acted.
3. No inference of negligence on the part of the personal representative shall be drawn from the personal representative's failure to exercise the authority conferred by subsections 1 and 2.

**SECTION 8. AMENDMENT.** Section 30.1-29-17 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-29-17. (5-417) General duty of conservator.** In the exercise of conservator's powers, a conservator is to act as a fiduciary and shall observe the standards of care applicable to trustees ~~as described by section 30.1-34-02.~~

**SECTION 9. AMENDMENT.** Section 30.1-32-03 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-32-03. (7-103) Effect of registration.**

1. By registering a trust, or accepting the trusteeship of a registered trust, the trustee submits personally to the jurisdiction of the district court in any proceeding under ~~section 30.1-33-04~~ chapter 59-10 relating to the trust that may be initiated by any interested person while the trust remains registered. Notice of any proceeding must be delivered to the trustee, or mailed to the trustee by ordinary first-class mail, at the trustee's address as listed in the registration or as thereafter reported to the district court and to the trustee's address as then known to the petitioner.
2. To the extent of their interests in the trust, all beneficiaries of a trust properly registered in this state are subject to the jurisdiction of the district court of registration for the purposes of proceedings under ~~section 30.1-33-04~~ chapter 59-10, provided notice is given pursuant to section 30.1-03-01.

**SECTION 10. AMENDMENT.** Section 30.1-34-02 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-34-02. (7-302) Trustee's standard of care and performance.** Except as otherwise provided by the terms of the trust, the trustee shall observe the standards in dealing with the trust assets as provided in ~~sections 59-02-08.1 through 59-02-08.14~~ chapter 59-17.

**SECTION 11. AMENDMENT.** Section 38-10-12 of the North Dakota Century Code is amended and reenacted as follows:

**38-10-12. Appointment of trustee to execute mineral lease if contingent future interests are involved.** If lands, or any estate or interest therein, are subject to any contingent future interest, legal or equitable, by way of remainder, reversion, or possibility of reverter, upon the happening of a condition subsequent, or otherwise, created by deed, will, or otherwise, and whether a trust is involved or not, and it is made to appear that it will be advantageous to the present and ultimate owners of said lands or estate or interest therein, the district court of the county in which the land or a portion thereof is situated has the power, pending the happening of any contingency and the vesting of such future interest or interests, to declare a trust in said lands or estate or interest therein, appoint a trustee therefor, and to authorize such trustee to sell, on such terms and containing such conditions as the court may prescribe, execute and deliver a valid oil, gas, coal, or other mineral lease covering said lands or estate or interest therein. If a trust is in existence and there is a trustee serving under the trust, the trustee appointed by the court under this section must be the same trustee or trustees as are serving under the existing trust. All proceedings must substantially comply with that provided for the administration of trusts in chapters ~~30.1-33, 30.1-34, and 59-04~~ 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19.

**SECTION 12. AMENDMENT.** Section 38-13-01 of the North Dakota Century Code is amended and reenacted as follows:

**38-13-01. Appointment of trustee to execute mineral lease and other documents if owner or claimant is absent - Administration of trust.** If any undivided mineral, leasehold, or royalty interest in land is claimed or owned by a person whose place of residence and whereabouts is unknown, and cannot reasonably be ascertained, the district court of the county in which the said land or a portion thereof is situated has the power to declare a trust in the interest of such owner or claimant and appoint a trustee therefor. Upon satisfactory proof made by the petitioner that a diligent but unsuccessful effort to locate such owner or claimant has been made and that it will be in the best interest of all owners of interests in said lands, the court shall authorize such trustee to execute and deliver an oil, gas, or other mineral lease, an assignment of leasehold interest, a ratification, division orders or other related documents or instruments on such terms and conditions as the court may approve. All proceedings must substantially comply with that provided for the administration of trusts in chapters ~~30.1-33, 30.1-34, and 59-04~~ 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19.

**SECTION 13. AMENDMENT.** Subsection 2 of section 59-08-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Self-settled special needs trust" means a trust created by an individual with a disability after August 10, 1993, which qualifies under 42 U.S.C. ~~1396p(d)(4)(A)~~ 1396p(d)(4).

**SECTION 14.** A new section to chapter 59-08 of the North Dakota Century Code is created and enacted as follows:

**Conflicts with other chapters.** If any provision of this chapter conflicts with chapter 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, or 59-19, the provision of this chapter takes precedence.

**SECTION 15.** Chapter 59-09 of the North Dakota Century Code is created and enacted as follows:

**59-09-01. (101) Short title.** Chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 may be cited as the North Dakota Uniform Trust Code.

**59-09-02. (102) Scope.**

1. Except as provided in subsection 2, chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 apply to express trusts, whether charitable or noncharitable and testamentary or inter vivos, and to trusts created pursuant to a statute or a judgment or decree that requires the trust to be administered in the manner of an express trust.
2. Chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 do not apply to:
  - a. A trust that is part of an employee benefit arrangement or an individual retirement account.
  - b. A trust account established under a qualified tuition savings program pursuant to section 6-09-38.
  - c. Trust accounts maintained on behalf of clients or customers by licensed service professionals, including trust accounts maintained by attorneys pursuant to the North Dakota Rules of Professional Conduct and by real estate brokers pursuant to chapter 43-23.
  - d. An endowment care fund established by a cemetery authority pursuant to chapter 23-21.
  - e. Funds maintained by public bodies as defined by chapter 1-07 or other governmental unit entities.
  - f. Trust funds held for a single business transaction or an escrow arrangement.
  - g. Trusts created by a depository agreement with a financial institution.
  - h. An account maintained under the North Dakota Uniform Transfers to Minors Act as contained in chapter 47-24.1.
  - i. A fund maintained pursuant to court order in conjunction with a bankruptcy proceeding or a business liquidation.
  - j. A voting trust described in chapter 10-19.1.
  - k. Funds maintained to manage proceeds from class actions.

- l. A trust created solely to secure the performance of an obligation.
- m. A trust created on behalf of a resident of a residential facility.
- n. A trust managed by a nonprofit association for disabled individuals under 42 U.S.C. 1396p(d)(4), as in effect on the effective date of chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 and under the rules adopted by the department of human services.
- o. A resulting or constructive trust.

**59-09-03. (103) Definitions.** Any term not specifically defined in this section has the meaning provided in title 30.1. Unless the context otherwise requires, in chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19:

- 1. "Action", with respect to an act of a trustee, includes a failure to act.
- 2. "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.
- 3. "Beneficiary" means a person that:
  - a. Has a present or future beneficial interest in a trust, vested or contingent; including the owner of an interest by assignment or transfer; or
  - b. In a capacity other than that of a trustee, holds a power of appointment over trust property.
- 4. "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in subsection 1 of section 59-12-05.
- 5. "Conservator" is as defined in section 30.1-01-06.
- 6. "Distributee" means any person who receives property of a trust from a trustee, other than as a creditor or purchaser.
- 7. "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.
- 8. "Guardian" is as defined in section 30.1-01-06.
- 9. "Internal Revenue Code" means the Internal Revenue Code of 1986, or corresponding future provisions of federal tax law.
- 10. "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.
- 11. "Jurisdiction", with respect to a geographic area, includes a state or country.

12. "Permissible distributee" means a beneficiary who is currently eligible to receive distributions of trust income or principal, whether the distribution is mandatory or discretionary.
13. "Power of withdrawal" means a presently excisable general power of appointment other than a power:
- a. Exercisable by a trustee and limited by an ascertainable standard; or
  - b. Exercisable by another person only upon consent of the trustee or a person holding an adverse interest.
14. "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.
15. "Qualified beneficiary":
- a. Means a beneficiary who, on the date the beneficiary's qualification is determined:
    - (1) Is a permissible distributee of trust income or principal;
    - (2) Would be a permissible distributee of trust income or principal if the interests of the distributees described in paragraph 1 terminated on that date without causing the trust to terminate; or
    - (3) Would be a permissible distributee of trust income or principal if the trust terminated on that date.
  - b. Does not include a contingent distributee or a contingent permissible distributee of trust income or principal whose interest in the trust is not reasonably expected to vest.
16. "Record" means information that is enshrined on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.
17. "Revocable", as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.
18. "Settlor" means a person, including a testator, that creates, or contributes property to a trust and if more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.
19. "Signed" means:
- a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by a facsimile telecommunication or electronically, or in any other manner reproduced on the record, is placed on a record or

instrument with the present intention to authenticate the record or instrument.

b. With respect to a record or instrument required by this chapter to be filed with the clerk of court, that:

(1) The record or instrument has been signed by a person authorized to do so by this chapter or by the trust instrument; and

(2) The signature and the record or instrument are communicated by a method or medium acceptable to the clerk of court.

20. "Special needs trust" means special needs trust as defined in section 59-08-01.

21. "Spendthrift provision" means a term of a trust which restrains either the voluntary or involuntary or both the voluntary and involuntary transfer of a beneficiary's interest and does not include or prevent a disclaimer of an interest of a beneficiary.

22. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

23. "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

24. "Trust instrument" means a record signed by the settlor that contains terms of the trust, including any amendments to the record and any modifications permitted by court order or by binding nonjudicial settlement agreement.

25. "Trustee" includes an original, additional, and successor trustee, and a cotrustee, whether or not appointed or confirmed by a court.

#### **59-09-04. (104) Knowledge.**

1. Subject to subsection 2, a person has knowledge of a fact if the person has actual knowledge of a fact; has received a notice or notification of a fact; or from all the facts and circumstances known to the person at the time in question, has reason to know a fact.

2. An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if the organization maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the



communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

**59-09-05. (105) Default and mandatory rules.**

1. Except as otherwise provided in the terms of the trust, this title governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.
2. The terms of a trust prevail over any provision of this title except:
  - a. The requirements for creating a trust;
  - b. The duty of a trustee to act in good faith and in accordance with the purposes of the trust;
  - c. The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful and possible to achieve;
  - d. The power of the court to modify or terminate a trust under sections 59-12-10, 59-12-11, 59-12-12, 59-12-13, 59-12-14, 59-12-15, and 59-12-16;
  - e. The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in chapter 59-13;
  - f. The power of the court under section 59-15-02 to require, dispense with, or modify or terminate a bond;
  - g. The power of the court under subsection 2 of section 59-15-08 to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;
  - h. The effect of an exculpatory term under section 59-18-08;
  - i. The rights under sections 59-18-10, 59-18-11, 59-18-12, and 59-18-13 of a person other than a trustee or beneficiary;
  - j. Periods of limitation for commencing a judicial proceeding;
  - k. The power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and
  - l. The subject matter jurisdiction of the court and venue for commencing a proceeding as provided in section 59-10-04.

**59-09-06. (106) Common law of trusts - Principles of equity.** The common law of trusts and principles of equity supplement chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19, except to the extent modified by chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 or another statute of this state.

**59-09-07. (107) Governing law.** The meaning and effect of the terms of a trust are determined by the law of the jurisdiction designated in the terms or, in the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

**59-09-08. (108) Principal place of administration.**

1. Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction, or all or part of the administration occurs in the designated jurisdiction.
2. A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.
3. Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection 2, may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.
4. The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration or a proposed transfer of some or all of the trust property to a successor trustee not less than sixty days before initiating the transfer. The notice of proposed transfer must include the name of the jurisdiction to which the principal place of administration is to be transferred; the address and telephone number at the new location at which the trustee can be contacted; an explanation of the reasons for the proposed transfer; the date on which the proposed transfer is anticipated to occur; and the date, not less than sixty days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.
5. The authority of a trustee under this section to transfer a trust's principal place of administration or a proposed transfer of some or all of the trust property to a successor trustee terminates if a majority of the qualified beneficiaries notify the trustee of an objection to the proposed transfer on or before the date specified in the notice.
6. In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 59-15-04.

**59-09-09. (109) Methods and waiver of notice.**

1. Notice to a person under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 or the sending of a document to a person under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail,

personal delivery, delivery to the person's last-known place of residence or place of business, or a properly directed electronic message.

2. Notice otherwise required under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 or a document otherwise required to be sent under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 does not need to be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.
3. Notice under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 or the sending of a document under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 may be waived by the person to be notified or sent the document.
4. Notice of a judicial proceeding must be given as provided in the applicable North Dakota Rules of Civil Procedure or as provided under section 30.1-03-01.

**59-09-10. (110) Others treated as qualified beneficiaries.**

1. A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 if the charitable organization, on the date the charitable organization's qualification is being determined:
  - a. Is a permissible distributee of trust income or principal;
  - b. Would be a permissible distributee of trust income or principal upon the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions; or
  - c. Would be a permissible distributee of trust income or principal if the trust terminated on that date.
2. A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section 59-12-08 or 59-12-09 has the rights of a qualified beneficiary under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19.
3. The attorney general of this state has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this state.

**59-09-11. (111) Nonjudicial settlement agreements.**

1. For purposes of this section, "interested persons" means a trustee and persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

2. Except as otherwise provided in subsection 3, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.
3. A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 or other applicable law. A spendthrift provision in the terms of a trust is presumed to constitute a material purpose of the trust.
4. Matters that may be resolved by a nonjudicial settlement agreement include the interpretation or construction of the terms of the trust, the approval of a trustee's report or accounting, direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power, the resignation or appointment of a trustee and the determination of a trustee's compensation, transfer of a trust's principal place of administration, liability of a trustee for an action relating to the trust, the extent or waiver of bond of a trustee, and the criteria for distribution to a beneficiary where the trustee is given discretion.
5. Any interested person may request the court to approve a nonjudicial settlement agreement to determine whether the representation as provided in chapter 59-11 was adequate and to determine whether the agreement contains terms and conditions the court could have properly approved.

**59-09-12. (112) Rules of construction.** The rules of construction that apply to the interpretation of and disposition of property by will or other governing instrument provided for under chapter 30.1-09.1 also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

**SECTION 16.** Chapter 59-10 of the North Dakota Century Code is created and enacted as follows:

**59-10-01. (201) Role of court in administration of trust.**

1. The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.
2. A trust is not subject to continuing judicial supervision unless ordered by the court.
3. A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.

**59-10-02. (202) Jurisdiction over trustee and beneficiary.**

1. By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

2. With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the courts of this state regarding any matter involving the trust. By accepting a distribution from the trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.
3. This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.

**59-10-03. Reserved.**

**59-10-04. (204) Venue.**

1. Except as otherwise provided in subsection 2, venue for a judicial proceeding involving a trust is in the county of this state in which the trust's principal place of administration is or will be located and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.
2. If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a county of this state in which a beneficiary resides, in a county in which any trust property is located, and if the trust is created by will, in the county in which the decedent's estate was or is being administered.

**SECTION 17.** Chapter 59-11 of the North Dakota Century Code is created and enacted as follows:

**59-11-01. (301) Representation - Basic effect.**

1. Notice to a person who may represent and bind another person under this chapter has the same effect as if notice were given directly to the other person. Notice of a hearing on any petition for a judicial hearing must be given as provided in the North Dakota Rules of Civil Procedure.
2. The consent of a person who may represent and bind another person under this chapter is binding on the person represented unless the person represented objects to the representation to the trustee or representative before the consent would otherwise have become effective.
3. Except as otherwise provided in sections 59-12-11 and 59-14-02, a person who under this chapter may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.
4. A settlor may not represent and bind a beneficiary under this chapter with respect to the termination or modification of a trust under subsection 1 of section 59-12-11.

**59-11-02. (302) Representation by holder of general power of appointment.** The holder of a presently exercisable general power of appointment and the persons represented with respect to the particular question or dispute may represent and bind persons whose interests, as permissible appointees, takers in

default, or otherwise, are subject to the power. The term "presently exercisable general power of appointment" includes a testamentary general power of appointment having no conditions precedent to its exercise other than the death of the holder, the validity of the holder's last will and testament, and the inclusion of a provision in the will sufficient to exercise this power.

**59-11-03. (303) Representation by fiduciaries and parents.** To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

1. A conservator may represent and bind the estate that the conservator controls to the extent of the powers and authority conferred upon conservators generally or by court order.
2. A guardian may represent and bind the ward if a conservator of the ward's estate has not been appointed to the extent of the powers and authority conferred upon guardians generally or by court order.
3. An agent under a power of attorney or having other written authority to act with respect to the particular question or dispute may represent and bind the principal.
4. A trustee may represent and bind the beneficiaries of the trust.
5. A personal representative of a decedent's estate may represent and bind persons interested in the estate.
6. A parent may represent and bind the parent's minor or unborn child if a conservator or guardian for the child has not been appointed. If a disagreement arises between parents seeking to represent the same minor child:
  - a. The parent who is a beneficiary of the trust that is the subject of the representation is entitled to represent the minor child;
  - b. If both parents are beneficiaries of the trust that is the subject of the representation, the parent who is a lineal descendant of the settlor is entitled to represent the minor child;
  - c. If neither parent is a beneficiary of the trust that is the subject of the representation, the parent who is a lineal descendant of the settlor is entitled to represent the minor child; and
  - d. If neither parent is a beneficiary or a lineal descendant of the settlor of the trust that is the subject of the representation, a guardian ad litem must be appointed to represent the minor child.
7. A person may represent and bind that person's unborn issue.

**59-11-04. (304) Representation by person having substantially identical interest.** Unless otherwise represented, a minor, incapacitated or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented with respect to the particular question or dispute.

**59-11-05. (305) Appointment of representative.**

1. If the court determines that an interest is not represented under this chapter, or that the otherwise available representation might be inadequate, the court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable. A representative may be appointed to represent several persons or interests.
2. A representative may act on behalf of the individual represented with respect to any matter arising under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19, whether or not a judicial proceeding concerning the trust is pending.
3. In making decisions, a representative may consider general benefit accruing to the living members of the individual's family.

**SECTION 18.** Chapter 59-12 of the North Dakota Century Code is created and enacted as follows:

**59-12-01. (401) Methods of creating trust.** A trust may be created by transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death, declaration by the owner of property that the owner holds identifiable property as trustee, or exercise of a power of appointment in favor of a trustee.

**59-12-02. (402) Requirements for creation.**

1. A trust is created only if the settlor has capacity to create a trust, the settlor indicates an intention to create the trust, the trust has a definite beneficiary or is a charitable trust, a trust for the care of an animal, as provided in section 59-12-08, or a trust for a noncharitable purpose, as provided in section 59-12-09; the trustee has duties to perform; and the same person is not the sole trustee and sole beneficiary.
2. A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.
3. A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

**59-12-03. (403) Trusts created in other jurisdictions.** A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which at the time of creation the settlor was domiciled, had a place of abode, or was a national; a trustee was domiciled or had a place of business; or any trust property was located.

**59-12-04. (404) Trust purposes.** A trust may be created only to the extent its purposes are lawful and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries.

**59-12-05. (405) Charitable purposes - Enforcement.**

1. A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.
2. If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.
3. The settlor of a charitable trust or the attorney general, among others, may maintain a proceeding to enforce the trust.
4. Chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 do not impair the rights and powers of the attorney general with respect to any trust.
5. In all cases of charitable trusts, the attorney general and the state's attorney of the county in which the trust is located are interested persons with respect to the trust estate.

**59-12-06. (406) Creation of trust induced by fraud, duress, or undue influence.** A trust is void or subject to reformation by the court to the extent its creation was induced by fraud, duress, or undue influence.

**59-12-07. (407) Evidence of oral trust.** Except as required by section 47-11-02 or a statute other than chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms, or an amendment or revocation of an oral trust, may be established only by clear and convincing evidence.

**59-12-08. (408) Trust for care of animal.**

1. A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.
2. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.
3. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.



**59-12-09. (409) Noncharitable trust without ascertainable beneficiary.**

Except as otherwise provided in section 59-12-08 or by another statute, the following rules apply:

1. A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee.
2. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.
3. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

**59-12-10. (410) Modification or termination of trust - Proceedings for approval or disapproval.**

1. In addition to the methods of termination prescribed by sections 59-12-11, 59-12-12, 59-12-13, and 59-12-14, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful or impossible to achieve.
2. A proceeding to approve or disapprove a proposed modification or termination under sections 59-12-11, 59-12-12, 59-12-13, 59-12-14, 59-12-15, and 59-12-16, or trust combination or division under section 59-12-17, may be commenced by a trustee or beneficiary. The settlor of a charitable trust may maintain a proceeding to modify the trust under section 59-12-13.

**59-12-11. (411) Modification or termination of noncharitable irrevocable trust by consent.**

1. A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.
2. Upon termination of a trust under subsection 1, the trustee shall distribute the trust property as agreed by the beneficiaries.
3. If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection 1, the modification or termination may be approved by the court if the court is satisfied that if all of the beneficiaries had consented, the trust could have been modified or terminated under this section and the interests of a beneficiary who does not consent will be adequately protected.

**59-12-12. (412) Modification or termination because of unanticipated circumstances or inability to administer trust effectively.**

1. Upon petition by the trustee, the attorney general, or an interested party other than the settlor, the court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.
2. The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.
3. Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

**59-12-13. (413) Cy pres.**

1. Except as otherwise provided in subsection 2, if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful, the trust does not fail, in whole or in part; the trust property does not revert to the settlor or the settlor's successors in interest; and the court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.
2. A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection 1 to apply cy pres to modify or terminate the trust.

**59-12-14. (414) Modification or termination of uneconomic trust.**

1. After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than one hundred thousand dollars may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.
2. The court may modify or terminate a trust or remove the trustee and appoint a different trustee if the court determines that the value of the trust property is insufficient to justify the cost of administration.
3. Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.
4. This section does not apply to an easement for conservation or preservation.

**59-12-15. (415) Reformation to correct mistakes.** The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

**59-12-16. (416) Modification to achieve settlor's tax objectives.** To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect.

**59-12-17. (417) Combination and division of trusts.** After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust. The terms of each new trust created by a division under this section do not have to be identical if the interest of each beneficiary is substantially the same under the terms of the trust prior to its division and the combined terms of all trusts after the division. Two or more trusts may be combined into a single trust if the interests of each beneficiary in the trust resulting from the combination are substantially the same as the combined interests of the beneficiary in the trusts prior to the combination. The trustee shall determine the terms controlling any trust after its combination as authorized by this section.

**59-12-18. Requisites of trust relating to real property.** A trust in relation to real property is not valid unless the trust is created or declared:

1. By a written instrument, subscribed by the trustee or by the trustee's agent thereto authorized in writing;
2. By the instrument under which the trustee claims the estate affected; or
3. By operation of law.

**SECTION 19.** Chapter 59-13 of the North Dakota Century Code is created and enacted as follows:

**59-13-01. (501) Rights of beneficiary's creditor or assignee.** To the extent a beneficiary's interest is not subject to a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

**59-13-02. (502) Spendthrift provision.**

1. A spendthrift provision is valid if it restrains either the voluntary or involuntary transfer or both the voluntary and involuntary transfer of a beneficiary's interest.
2. A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust", or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.
3. A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this chapter, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

**59-13-03. (503) Exceptions to spendthrift provision.**

1. In this section, "child" includes any person for whom an order or judgment for child support has been entered by a court of competent jurisdiction.
2. A spendthrift provision is unenforceable against:
  - a. A beneficiary's child, spouse, or former spouse who has a judgment or court order against the beneficiary for support or maintenance;
  - b. A judgment creditor who has provided services for the protection of a beneficiary's interest in the trust; and
  - c. A claim of this state or the United States to the extent a statute of this state or federal law so provides.
3. The exceptions contained in subsection 2 do not apply to a self-settled special needs trust or a third-party special needs trust under chapter 59-08 nor to any trust that meets the qualifications of 42 U.S.C. 1396p(d).
4. A claimant against which a spendthrift provision cannot be enforced may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances. If there is more than one permissible distributee, the court may grant such relief as is equitable.

**59-13-04. (504) Discretionary trusts - Effect of standard.**

1. In this section, "child" includes any person for whom an order or judgment for child support has been entered by a court of competent jurisdiction.
2. Except as otherwise provided in subsection 3, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if the discretion is expressed in the form of a standard of distribution, or the trustee has abused the discretion.
3. To the extent a trustee has not complied with a standard of distribution or has abused a discretion, a distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child, spouse, or former spouse and the court shall direct the trustee to pay the child, spouse, or former spouse such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.
4. This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

5. If the trustee's or cotrustee's discretion to make distributions for the trustee's or cotrustee's own benefit is limited by an ascertainable standard, a creditor may not reach or compel distribution of the beneficial interest except to the extent the interest would be subject to the creditor's claim if the beneficiary was not acting as trustee or cotrustee.

**59-13-05. (505) Creditor's claim against settlor.**

1. The following rules apply whether or not the terms of a trust contain a spendthrift provision. During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors to the extent that the property would be subject to creditors' claims if the property had not been placed in the trust. With respect to an irrevocable trust, other than a special needs trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable immediately before the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances. For purposes of this section, "statutory allowances" includes any homestead exception under chapter 47-18 and the allowances included in title 30.1.
2. For purposes of this section during the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power and, upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, or section 2503(b) of the Internal Revenue Code of 1986, or corresponding future provisions of federal tax law.

**59-13-06. (506) Overdue distribution.**

1. In this section, "mandatory distribution" means a distribution of income or principal which the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. The term does not include a distribution subject to the exercise of the trustee's discretion even if:
  - a. The discretion is expressed in the form of a standard of distribution;  
or
  - b. The terms of the trust authorizing a distribution couple language of discretion with language of direction.

2. Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

**59-13-07. (507) Personal obligations of trustee.** Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

**SECTION 20.** Chapter 59-14 of the North Dakota Century Code is created and enacted as follows:

**59-14-01. (601) Capacity of settlor of revocable trust.** The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

**59-14-02. (602) Revocation or amendment of revocable trust.**

1. Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before the effective date of this section.
2. If a revocable trust is created or funded by more than one settlor to the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses; to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution; and upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.
3. The settlor may revoke or amend a revocable trust by substantial compliance with a method provided in the terms of the trust or, if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by a later will or codicil that expressly refers to the trust or any other method manifesting clear and convincing evidence of the settlor's intent.
4. Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.
5. A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power, exercised in writing and delivered to the trustee.
6. A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

7. A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

**59-14-03. (603) Settlor's powers - Powers of withdrawal.**

1. While a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.
2. During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

**59-14-04. (604) Limitation on action contesting validity of revocable trust - Distribution of trust property.**

1. A person shall commence a judicial proceeding to contest the validity of a trust that was revocable immediately before the settlor's death within the earlier of three years after the settlor's death or one hundred twenty days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.
2. Upon the death of the settlor of a trust that was revocable immediately before the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless the trustee knows of a pending judicial proceeding contesting the validity of the trust or a potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within sixty days after the contestant sent the notification.
3. A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.
4. This section does not impose a duty upon the trustee to give notice under this section unless the notice is expressly required in the trust agreement.

**SECTION 21.** Chapter 59-15 of the North Dakota Century Code is created and enacted as follows:

**59-15-01. (701) Accepting or declining trusteeship.**

1. Except as otherwise provided in subsection 3, a person designated as trustee accepts the trusteeship by substantially complying with a method of acceptance provided in the terms of the trust or, if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

2. A person designated as trustee who has not yet accepted the trusteeship may decline the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have declined the trusteeship.
3. A person designated as trustee, without accepting the trusteeship, may act to preserve the trust property if, within a reasonable time after acting, the person sends a declination of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary and inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

**59-15-02. (702) Trustee's bond.**

1. A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.
2. The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.
3. A bank or trust company qualified to act as a trustee in this state need not give bond, even if required by the terms of the trust.

**59-15-03. (703) Cotrustees.**

1. Cotrustees who are unable to reach a unanimous decision may act by majority decision.
2. If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.
3. A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.
4. If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.
5. A trustee may delegate to a cotrustee the performance of any function other than a function that the terms of the trust expressly require to be performed by the trustees jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.
6. Except as otherwise provided in subsection 7, a trustee who does not join in an action of another trustee is not liable for the action.



7. Each trustee shall exercise reasonable care to prevent a cotrustee from committing a serious breach of trust and compel a cotrustee to redress a serious breach of trust.
8. A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

**59-15-04. (704) Vacancy in trusteeship - Appointment of successor.**

1. A vacancy in a trusteeship occurs if a person designated as trustee declines the trusteeship, a person designated as trustee cannot be identified, cannot be located, or does not exist, a trustee resigns, a trustee is disqualified or removed, a trustee dies, or a guardian or conservator is appointed for an individual serving as trustee.
2. If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.
3. A vacancy in a trusteeship of a noncharitable trust which is required to be filled must be filled in the following order of priority. First, the vacancy must be filled by a person designated in the terms of the trust or appointed under the terms of the trust to act as successor trustee. Second, the vacancy must be filled by a person appointed by unanimous agreement of the qualified beneficiaries. Finally, the vacancy must be filled by a person appointed by the court.
4. A vacancy in a trusteeship of a charitable trust which is required to be filled must be filled in the following order of priority. First, the vacancy must be filled by a person designated in the terms of the trust or appointed under the terms of the trust to act as successor trustee. Second, the vacancy must be filled by a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust if the attorney general concurs in the selection. Finally, the vacancy must be filled by a person appointed by the court.
5. Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

**59-15-05. (705) Resignation of trustee.**

1. A trustee may resign:
  - a. Upon at least thirty days' notice to the settlor, if living, to all cotrustees, and the qualified beneficiaries, except those qualified beneficiaries under a revocable trust that the settlor has the capacity to revoke; or
  - b. With the approval of the court.

2. In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.
3. Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

**59-15-06. (706) Removal of trustee.**

1. The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.
2. The court may remove a trustee if the trustee has committed a serious breach of trust; if lack of cooperation among cotrustees substantially impairs the administration of the trust; if because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or if there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.
3. Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under subsection 2 of section 59-18-01 as may be necessary to protect the trust property or the interests of the beneficiaries.

**59-15-07. (707) Delivery of property by former trustee.**

1. Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.
2. A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to the property.
3. Title to all trust property must be owned by and vested in any successor trustee without any conveyance, transfer, or assignment by the prior trustee.

**59-15-08. (708) Compensation of trustee.**

1. If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.
2. If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if the duties of the trustee are substantially

different from those contemplated when the trust was created or the compensation specified by the terms of the trust would be unreasonably low or high.

**59-15-09. (709) Reimbursement of expenses.**

1. A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for expenses that were properly incurred in the administration of the trust and, to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.
2. An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest. The lien under this subsection does not apply to a common or collective fund that is exempt under 26 U.S.C. 584.

**SECTION 22.** Chapter 59-16 of the North Dakota Century Code is created and enacted as follows:

**59-16-01. (801) Duty to administer trust.** Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its purposes and in accordance with chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19.

**59-16-02. (802) Duty of loyalty.**

1. A trustee shall administer the trust solely in the interests of the beneficiaries.
2. Subject to the rights of persons dealing with or assisting the trustee as provided in section 59-18-12, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless the transaction was authorized by the terms of the trust; the transaction was approved by the court; the beneficiary did not commence a judicial proceeding within the time allowed by section 59-18-05; the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 59-18-09; or the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.
3. A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with the trustee's spouse; the trustee's descendants, siblings, parents, or their spouses; an agent or attorney of the trustee; or a corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.
4. A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while

the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

5. A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.
6. An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor rule of chapter 59-17. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee at least annually shall notify the persons entitled under section 59-16-13 to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined.
7. In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.
8. If fair to the beneficiaries, an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee; payment of reasonable compensation to the trustee; a transaction between a trust and another trust, decedent's estate, or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest; a deposit of trust money in a regulated financial service institution operated by the trustee; or an advance by the trustee of money for the protection of the trust is not precluded by this section.
9. The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

**59-16-03. (803) Impartiality.** If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests.

**59-16-04. (804) Prudent administration.** A trustee shall administer the trust as a prudent person would by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

**59-16-05. (805) Costs of administration.** In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee.

**59-16-06. (806) Trustee's skills.** A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

**59-16-07. (807) Delegation by trustee.**

1. A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in selecting an agent; establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.
2. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.
3. A trustee who complies with subsection 1 is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.
4. By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

**59-16-08. (808) Powers to direct.**

1. While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.
2. If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.
3. The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.
4. A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of fiduciary duty.

**59-16-09. (809) Control and protection of trust property.** A trustee shall take reasonable steps to take control of and protect the trust property.

**59-16-10. (810) Recordkeeping and identification of trust property.**

1. A trustee shall keep adequate records of the administration of the trust.
2. A trustee shall keep trust property separate from the trustee's own property.

3. Except as otherwise provided in subsection 4, a trustee, other than a trustee granted trust or fiduciary powers from a federal or state authority, shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.
4. If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

**59-16-11. (811) Enforcement and defense of claims.** A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

**59-16-12. (812) Collecting trust property.** A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee and to redress a breach of trust known to the trustee to have been committed by a former trustee or other fiduciary.

**59-16-13. (813) Duty to inform and report.**

1. A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.
2. A trustee upon written request shall promptly furnish a copy of the trust instrument:
  - a. To a qualified beneficiary of a revocable trust; and
  - b. To a beneficiary of a trust that is not revocable.
3. A trustee within sixty days after accepting a trusteeship shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number.
4. A trustee within sixty days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in subsection 6.
5. A trustee shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.
6. A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other qualified or nonqualified beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a

cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A personal representative, conservator, or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.

7. A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.
8. The duties of a trustee specified in this section are not subject to section 59-14-03.
9. Subsections 3 and 4 do not apply to a trustee that accepts a trusteeship before August 1, 2007, to an irrevocable trust created before August 1, 2007, or to a revocable trust that becomes irrevocable before August 1, 2007.

**59-16-14. (814) Discretionary powers - Tax savings.**

1. Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute", "sole", or "uncontrolled", the trustee shall exercise a discretionary power in good faith and in accordance with the purposes of the trust.
2. Subject to subsection 4, and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:
  - a. A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard; and
  - b. A trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.
3. A power whose exercise is limited or prohibited by subsection 2 may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.
4. Subsection 2 does not apply to:
  - a. A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in section 2056(b)(5) or 2523(e) of the Internal Revenue Code was previously allowed;
  - b. Any trust during any period that the trust may be revoked or amended by its settlor; or
  - c. A trust if contributions to the trust qualify for the annual exclusion under section 2503(c) of the Internal Revenue Code.

**59-16-15. (815) General powers of trustee.** A trustee, without authorization by the court, may exercise powers conferred by the terms of the trust and, except as limited by the terms of the trust, all powers over the trust property which an unmarried owner, who is not an incapacitated person, has over individually owned property, any other powers appropriate to achieve the proper investment, management, and distribution of the trust property, and any other powers conferred by chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19. The exercise of a power is subject to the fiduciary duties prescribed by this chapter.

**59-16-16. (816) Specific powers of trustee.** Without limiting the authority conferred by section 59-16-15, a trustee may:

1. Collect trust property and accept or reject additions to the trust property from a settlor or any other person.
2. Acquire or sell property, for cash or on credit, at public or private sale.
3. Exchange, partition, or otherwise change the character of trust property.
4. Deposit or invest trust money in a regulated financial institution, including one operated by the trustee or an affiliate of the trustee.
5. Borrow money, with or without security from any financial institution, including a financial institution that is serving as a trustee or one of its affiliates, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust.
6. With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital.
7. With respect to stocks or other securities, exercise the rights of an absolute owner, including the right to vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement; hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery; pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and deposit the securities with a depository or other regulated financial service institution.
8. With respect to an interest in real property, construct or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries.
9. Enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust.



10. Grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired.
11. Insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability.
12. Abandon, distribute, or decline to administer property of no value or of insufficient value to justify its collection or continued administration.
13. With respect to possible liability for violation of environmental law, inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest for the purpose of determining the application of environmental law with respect to the property; take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement; decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law; compromise claims against the trust which may be asserted for an alleged violation of environmental law; and pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law.
14. Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust.
15. Pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust.
16. Exercise elections with respect to federal, state, and local taxes.
17. Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds.
18. Make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans.
19. Pledge trust property to guarantee loans made by others to the beneficiary.
20. Appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed.

21. Pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian; paying it to the beneficiary's custodian under chapter 47-24.1 and for that purpose, creating a custodianship or custodial trust; if the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution.
22. On distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation.
23. Resolve a dispute concerning the interpretation of the trust of the trust's administration by mediation, arbitration, or other procedure for alternative dispute resolution.
24. Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties.
25. Sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers.
26. Purchase and pay from trust principal the premiums on life insurance.
27. Allocate items of income or expense to either trust income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence or amortization, or for depletion in mineral or timber properties.
28. a. With respect to the administration of trust assets as one or more trusts to:
  - (1) Receive and administer additional property as part of the trust estate or as a separate trust having terms identical to the terms of the existing trust;
  - (2) Sever any trust estate on a fractional basis, before or after a trust is funded, into two or more separate trusts for any reason;
  - (3) Segregate by allocation to a separate account or trust a specific amount or gift made from any trust to reflect a partial disclaimer, to reflect or result in differences in federal tax attributes, to satisfy any federal tax requirements or elections, or to reduce potential generation, skipping transfer tax liability, in a manner consistent with the rules governing disclaimers, such federal tax attributes, such requirements or

elections, or any applicable tax rules or regulations, and any income earned on a segregated amount or gift after segregation occurs passes to the designated taker of such amount or gift; and

- (4) Consolidate two or more trusts having substantially similar terms into a single trust.
  - b. In managing, investing, administering, and distributing the trust property of any separate account or trust and in making applicable tax elections, consider the differences in federal tax attributes and all other factors the trustee believes pertinent and may make disproportionate distributions from the separate trusts created. A separate account or trust created by severance or segregation must be treated as a separate trust for all purposes from and after the date on which the severance or segregation is effective. The trustee shall hold such separate account or trust on terms and conditions that are substantially equivalent to the terms of the trust from which it was severed or segregated so that the aggregate interests of each beneficiary in the several trusts are substantially equivalent to the beneficiary's interests in the trust before severance or segregation; provided, however, that any terms of the trust before severance that would affect qualification of the trust for any federal tax deduction, exclusion, election, exemption, or other special federal tax status must remain identical in each of the separate trusts created.
29. Employ persons, including attorneys, auditors, investment advisors or agents, to advise or assist the trustee in the performance of administrative duties. A trustee may act based on the recommendations of professionals without independently investigating the recommendations.
  30. Deal with the personal representative, trustee, or other representative of any other trust or estate in which a beneficiary of the trust estate has an interest, notwithstanding the fact that the trustee is a personal representative, trustee, or other representative of the other trust or estate.
  31. On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to the property.

**59-16-17. (817) Distribution upon termination.**

1. Upon termination or partial termination of a trust, the trustee may send to the beneficiaries, and the attorney general in the case of a charitable trust, a proposal for distribution. The right of any beneficiary, or the attorney general in the case of a charitable trust, to object to the proposed distribution terminates if the beneficiary, or the attorney general in the case of a charitable trust, does not notify the trustee of an objection within thirty days after the proposal was sent, but only if the proposal informed the beneficiary, or the attorney general in the case of a charitable trust, of the right to object and of the time allowed for objection.

2. Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.
3. A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent it was induced by improper conduct of the trustee or the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

**SECTION 23.** Chapter 59-17 of the North Dakota Century Code is created and enacted as follows:

**59-17-01. Prudent investor rule.**

1. Except as otherwise provided in subsection 2, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in sections 59-16-02, 59-16-03, 59-16-05, 59-16-06, and 59-16-07 and in this chapter.
2. The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

**59-17-02. Standard of care - Portfolio strategy - Risk and return objectives.**

1. A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.
2. A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.
3. Among circumstances a trustee shall consider in investing and managing trust assets are any of the following that are relevant to the trust or its beneficiaries:
  - a. General economic conditions;
  - b. The possible effect of inflation or deflation;
  - c. The expected tax consequences of investment decisions or strategies;
  - d. The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

- e. The expected total return from income and the appreciation of capital;
  - f. Other resources of the beneficiaries;
  - g. Needs for liquidity, regularity of income, and preservation or appreciation of capital; and
  - h. An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.
4. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.
  5. A trustee may invest in any kind of property or type of investment consistent with the standards of this title.

**59-17-03. Diversification.** A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

**59-17-04. Duties at inception of trusteeship.** Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust and with the requirements of this chapter.

**59-17-05. Reviewing compliance.** Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

**59-17-06. Language invoking standard.** The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under sections 59-16-02, 59-16-03, 59-16-05, 59-16-06, and 59-16-07 and under this chapter: "investments permissible by law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital", "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent investor rule".

**SECTION 24.** Chapter 59-18 of the North Dakota Century Code is created and enacted as follows:

**59-18-01. (1001) Remedies for breach of trust.**

1. A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.
2. To remedy a breach of trust that has occurred or may occur, the court may compel the trustee to perform the trustee's duties; enjoin the trustee from committing a breach of trust; compel the trustee to redress a breach of trust by paying money, restoring property, or other means;

order a trustee to account; appoint a special fiduciary to take possession of the trust property and administer the trust; suspend the trustee; remove the trustee as provided in section 59-15-06; reduce or deny compensation to the trustee; subject to section 59-18-12, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or order any other appropriate relief.

**59-18-02. (1002) Damages for breach of trust.**

1. A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of the amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred or the profit the trustee made by reason of the breach.
2. Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

**59-18-03. (1003) Damages in absence of breach.** Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

**59-18-04. Reserved.**

**59-18-05. (1005) Limitation of action against trustee.**

1. A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary in the report or in a separate notice accompanying the report of the time allowed for commencing a proceeding.
2. A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.
3. If subsection 1 does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within five years after whichever occurs first: the removal, resignation, or death of the trustee; the termination of the beneficiary's interest in the trust; or the termination of the trust.

**59-18-06. (1006) Reliance on trust instrument.** A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is

not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

**59-18-07. (1007) Event affecting administration or distribution.** If the happening of an event, including marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

**59-18-08. (1008) Exculpation of trustee.**

1. A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that the term relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.
2. Unless the settlor was represented by an attorney not employed by the trustee with respect to the trust containing the exculpatory term, an exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the settlor.

**59-18-09. (1009) Beneficiary's consent, release, or ratification.** A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless the consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee or at the time of the consent, release, or ratification, the beneficiary lacked capacity or did not know of the beneficiary's rights or of the material facts relating to the breach.

**59-18-10. (1010) Limitation on personal liability of trustee.**

1. Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity. The addition of the phrase "trustee" or "as trustee" or a similar designation to the signature of a trustee on a written contract is considered prima facie evidence of a disclosure of a fiduciary capacity.
2. A trustee is personally liable for torts committed in the course of administering a trust or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.
3. A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.
4. Whenever a trust instrument reserves to the settlor, or vests in an advisory or investment committee, or in any other person, including one

or more cotrustees to the exclusion of the trustee or to the exclusion of one or more of several trustees, authority to direct the making or retention of any investment, the excluded trustee or trustees are not liable, either individually or as a fiduciary, for any loss resulting from the making or retention of any investment pursuant to such direction.

5. In the absence of actual knowledge or information that would cause a reasonable trustee to inquire further, a trustee may not be held liable for failure to take necessary steps to compel the redress of any breach of trust or fiduciary duty by any predecessor personal representative, trustee, or other fiduciary. This section may not be construed to limit the fiduciary liability of any trustee for the acts or omissions of the trustee with respect to the trust estate.

**59-18-11. (1011) Interest as general partner.**

1. Except as otherwise provided in subsection 3 or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed:
  - a. In the contract;
  - b. In a registration of the partnership as a limited liability partnership filed pursuant to chapter 45-22 in which the trustee is listed as a managing partner; or
  - c. In a certificate of limited liability limited partnership filed pursuant to chapter 45-23 in which the trustee is listed as a general partner.
2. Except as otherwise provided in subsection 3, a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.
3. The immunity provided by this section does not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or one or more of the trustee's descendants, siblings, or parents, or the spouse of any of them.
4. If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

**59-18-12. (1012) Protection of person dealing with trustee.**

1. A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers, is protected from liability as if the trustee properly exercised the power.
2. A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.



3. A person who in good faith delivers assets to a trustee need not ensure their proper application.
4. A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated, is protected from liability as if the former trustee were still a trustee.
5. Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

**59-18-13. (1013) Certification of trust.**

1. Unless otherwise required by chapter 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, or 59-19, the trustee may furnish to the person a certification of trust containing information that includes that the trust exists and the effective date of the trust instrument, the name of the trust, if a name is given, the identity of each settlor, the identity and address of the currently acting trustee, the applicable powers of the trustee, which may make reference to the powers set forth in chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19, the revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust, and the authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee.
2. A certification of trust may be signed or otherwise authenticated by any trustee.
3. A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.
4. A certification of trust need not contain the dispositive terms of a trust.
5. A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction.
6. A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.
7. A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

8. A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages if the court determines that the person did not act in good faith in demanding the trust instrument.
9. This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

**SECTION 25.** Chapter 59-19 of the North Dakota Century Code is created and enacted as follows:

**59-19-01. (1102) Electronic records and signatures.** The provisions of chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 governing the legal effect, validity, or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7002] and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

**59-19-02. (1106) Application to existing relationships.**

1. Except as otherwise provided in chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19, effective August 1, 2007, these chapters:
  - a. Apply to all trusts created after July 31, 2007; and
  - b. Apply to all judicial proceedings concerning trusts which are commenced after July 31, 2007.
2. Except as otherwise provided in chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19, from August 1, 2007, through July 31, 2009:
  - a. A trust created before August 1, 2007, may elect to be subject to chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19; however, that trust must be in compliance with those chapters by August 1, 2009;
  - b. Any rule of construction or presumption provided in chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 applies to trust instruments executed before August 1, 2009, unless there is a clear indication of a contrary intent in the terms of the trust;
  - c. Chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 do not apply to judicial proceedings concerning trusts which are commenced before that date unless the court finds that application of a particular provision of these chapters would not substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of these chapters applies and the superseded law does not apply; and

- d. An act done before August 1, 2009, is not affected by chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19.
3. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before August 1, 2007, for those trusts that are subject to subsection 1, or before August 1, 2009, for those trusts that are subject to subsection 2, that statute continues to apply to the right even if it has been repealed or superseded.

**SECTION 26.** Chapter 59-20 of the North Dakota Century Code is created and enacted as follows:

**59-20-01. Private foundations - Charitable trusts - Split-interest trusts.**

1. Any will or trust instrument creating a trust that is a "private foundation", as defined in section 509(a) of the Internal Revenue Code of 1954, or a "charitable trust", as defined in section 4947(a)(1) of the Internal Revenue Code of 1954, or a "split-interest trust", as defined in section 4947(a)(2) of the Internal Revenue Code of 1954, and any other instrument governing the trustee of any such trust, or the use, retention, or disposition of any of the income or property of such trust, may be deemed to have incorporated within the will, trust instrument, or other governing instrument, with the same effect as though such language were included in the will, trust instrument, or other governing instrument, the following provisions with respect to the trust and the trustee thereof, and, except as the contrary is provided in subsection 2, such provisions govern the administration and distribution of any such trust, irrespective of any provisions of any applicable will, trust instrument, or other governing instrument, statute, or law of this state to the contrary:
  - a. The trustee shall distribute for each taxable year of the trust amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code of 1954, as now enacted or as hereafter amended.
  - b. The trustee may not engage in any act of "self-dealing", as defined in section 4941(d) of the Internal Revenue Code of 1954, which would give rise to any liability for the tax imposed by section 4941(a) of the Internal Revenue Code of 1954.
  - c. The trustee may not retain any "excess business holdings", as defined in section 4943(c) of the Internal Revenue Code of 1954, which would give rise to any liability for the tax imposed by section 4943(a) of the Internal Revenue Code of 1954.
  - d. The trustee may not make any investments that would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of section 4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by section 4944(a) of the Internal Revenue Code of 1954.
  - e. The trustee may not make any "taxable expenditure", as defined in section 4945(d) of the Internal Revenue Code of 1954, which

would give rise to any liability for the tax imposed by section 4945(a) of the Internal Revenue Code of 1954.

2. Subsection 1 does not apply to the extent that a court of competent jurisdiction determines that application would be contrary to the terms of the will, trust instrument, or other governing instrument described in subsection 1 and that such will, trust instrument, or other governing instrument may not be changed to conform to subsection 1.
3. As used in this section, "trustee" means a corporation, individual, or other legal entity acting as an original, added, or successor trustee of a testamentary or inter vivos trust estate. Any reference to a particular section of the Internal Revenue Code of 1954 includes, as now enacted or as hereafter amended, such section and any provision of federal law as is or may hereafter be applicable, cognate to such section.
4. This section does not impair the rights and powers of the attorney general or the courts of this state with respect to any trust.

**SECTION 27. REPEAL.** Chapters 30.1-32, 30.1-33, 30.1-34, 59-01, 59-02, 59-03, 59-04, and 59-05 of the North Dakota Century Code are repealed.

Approved March 13, 2007  
Filed March 14, 2007

# WAREHOUSING AND DEPOSITS

## CHAPTER 550

### HOUSE BILL NO. 1470

(Representatives Pollert, Heller, D. Johnson, Weisz)  
(Senators Erbele, Wanzek)

## GRAIN STORAGE CONTRACT TERMINATION NOTICES

AN ACT to amend and reenact section 60-02-30 of the North Dakota Century Code, relating to public grain warehouse contracts; to repeal section 60-02-31 of the North Dakota Century Code, relating to notices for the termination of grain storage contracts; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 60-02-30 of the North Dakota Century Code is amended and reenacted as follows:

#### **60-02-30. Termination of public grain warehouse storage contracts - Notice to receiptholder.**

1. All storage contracts terminate on the date identified in the publication required by section 60-02-17. If a different termination date is not identified in the publication, then all storage contracts on grain in ~~store~~ at a public grain warehouses warehouse terminate on June thirtieth of each year, except for storage contracts on dry edible beans which terminate on April thirtieth of each year.
2. Storage on ~~any or all~~ grain in ~~storage at a public grain warehouses~~ warehouse may be terminated by the ~~owner~~ receiptholder at any time before the applicable date by the payment of all legal charges and the surrender of the warehouse receipt, together with a demand for delivery of the grain in storage, or notice to the public warehouseman to sell the stored grain.
3. Upon the expiration of the storage contract, the warehouseman is not obligated to renew the storage contract.
4. At least thirty days before the termination date of a storage contract, the public warehouseman shall notify the receiptholder by mail of the warehouseman's intention to terminate the storage contract on the date identified in the storage contract, unless the receiptholder, before that time, demands redelivery, authorizes sale, extends the storage contract, or enters a new contract with the public warehouseman for restorage. Failure to notify the receiptholder, as required by this section, results in the forfeiture of storage charges accrued for the grain during the previous twelve months.

5. In the absence of a demand for delivery, an order to sell, or an agreement between the public warehouseman and the receipt holder for storage after the termination date of the storage contract, the warehouseman ~~may sell~~, upon the expiration of the storage contract, may sell at the local market price on the close of business on that day, all stored grain of the receipt holder and tender to the receipt holder the proceeds of the sale, less accrued storage charges ~~thereon~~ and the public warehouseman's advances upon any previous storage contract of the receipt holder.

**SECTION 2. REPEAL.** Section 60-02-31 of the North Dakota Century Code is repealed.

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

Approved March 9, 2007

Filed March 12, 2007

**CHAPTER 551****SENATE BILL NO. 2247**

(Senators Wanzek, Klein, O'Connell)  
(Representatives D. Johnson, Onstad, Weisz)

**ROVING GRAIN BUYER LICENSURE AND BONDING  
EXEMPTION**

AN ACT to create and enact a new section to chapter 60-02.1 and a new section to chapter 60-10 of the North Dakota Century Code, relating to licensure and bonding exemptions for roving grain buyers; and to provide an expiration date.

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

**SECTION 1.** A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

**Roving grain buyers - Exception - Applicability of provisions.**

Notwithstanding any other law, this chapter does not apply to any person that purchases, solicits, or merchandises grain, which has been cleaned, processed, and made ready for consumption, from a public warehouseman licensed and bonded under chapter 60-02 or from a facility-based grain buyer licensed and bonded under this chapter. If the person engages in any activity other than those described in this section, the person is subject to the law governing those other activities.

**SECTION 2.** A new section to chapter 60-10 of the North Dakota Century Code is created and enacted as follows:

**Roving grain buyers - Exception - Applicability of provisions.**

Notwithstanding any other law, this chapter does not apply to any person that purchases, solicits, or merchandises grain, which has been cleaned, processed, and made ready for consumption, from a public warehouseman licensed and bonded under chapter 60-02 or from a facility-based grain buyer licensed and bonded under chapter 60-02.1. If the person engages in any activity other than those described in this section, the person is subject to the law governing those other activities.

**SECTION 3. EXPIRATION DATE.** This Act is effective through July 31, 2009, and after that date is ineffective.

Approved April 13, 2007  
Filed April 16, 2007

**CHAPTER 552****HOUSE BILL NO. 1360**

(Representatives Headland, Brandenburg, Pollert)  
(Senators Erbele, Klein, Wanzek)

**CREDIT-SALE CONTRACT INDEMNITY FUND  
INVESTMENT**

AN ACT to amend and reenact section 60-10-02 of the North Dakota Century Code, relating to investment of the credit-sale contract indemnity fund; and to provide a continuing appropriation.

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

**SECTION 1. AMENDMENT.** Section 60-10-02 of the North Dakota Century Code is amended and reenacted as follows:

**60-10-02. Credit-sale contract indemnity fund - Creation - Continuing appropriation.** There is created in the state treasury the credit-sale contract indemnity fund. The state treasurer shall invest available moneys in the fund in accordance with section 21-10-07 and in cooperation with the public service commission and shall deposit any income earned through the investments into the fund. The fund and ~~interest earned on~~ earnings of the fund are appropriated to the public service commission on a continuing basis to be used exclusively to carry out the intent and purpose of this chapter.

Approved April 9, 2007  
Filed April 10, 2007



**CHAPTER 553****HOUSE BILL NO. 1181**

(Representatives Headland, Belter, Brandenburg)

(Senators Erbele, Klein, Wanzek)

**CREDIT-SALE CONTRACT INDEMNITY FUND  
BALANCE**

AN ACT to amend and reenact section 60-10-03 of the North Dakota Century Code, relating to the credit-sale contract indemnity fund.

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

**SECTION 1. AMENDMENT.** Section 60-10-03 of the North Dakota Century Code is amended and reenacted as follows:

**60-10-03. Credit-sale contract indemnity fund - Suspension of assessment.** ~~When~~ At the end of the calendar quarter in which the credit-sale contract indemnity fund reaches a level of ten six million dollars, the public service commission shall suspend collection of the assessment required by this chapter. If after suspension of collection the balance in the fund is less than ~~five~~ three million dollars, the public service commission shall require collection of the assessment.

Approved March 23, 2007

Filed March 23, 2007

# WATERS

## CHAPTER 554

### HOUSE BILL NO. 1513

(Representatives Charging, Drovdal, Froelich, Onstad, Wrangham)  
(Senator Warner)

### EMERGENCY DRINKING WATER GRANT PROGRAM

AN ACT to create and enact a new section to chapter 61-02 of the North Dakota Century Code, relating to an emergency municipal, tribal, and rural water system drinking water grant program.

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

**SECTION 1.** A new section to chapter 61-02 of the North Dakota Century Code is created and enacted as follows:

**Emergency municipal, tribal, and rural water system drinking water grant program.** The commission may establish an emergency municipal, tribal, and rural water assistance program for municipalities, tribes, and rural water systems, whose primary source of water is the Missouri River, Lake Sakakawea, or Lake Oahe. The commission may establish procedures, cost-share guidelines, and other criteria for municipalities, tribes, and rural water systems that request emergency assistance due to low water conditions on the Missouri River, Lake Sakakawea, or Lake Oahe. The purpose of this program is to provide emergency grant funds to municipalities, tribes, and rural water systems facing a critical need or health risk as a result of the inability of the water intake system for the municipal, tribal, or rural water system to supply an adequate quantity of quality water to the people served by the municipal, tribal, or rural water system.

Approved April 13, 2007  
Filed April 16, 2007

**CHAPTER 555****HOUSE BILL NO. 1282**  
(Representatives Damschen, Monson)  
(Senators Fischer, Olafson)**FEDERALLY CONSTRUCTED PROJECT  
MAINTENANCE ASSESSMENTS**

AN ACT to amend and reenact section 61-16.1-40.1 of the North Dakota Century Code, relating to approval of assessments for maintenance of federally constructed flood control or soil conservation service projects.

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

**SECTION 1. AMENDMENT.** Section 61-16.1-40.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-40.1. Maintenance of federally constructed projects - Assessment district established.** If a water resource board enters or has been assigned rights in a contract with a federal agency for construction of a flood control project or soil conservation service project, and the terms of the contract require the water resource board to provide for maintenance of the project after construction, the water resource board may finance in whole or in part the maintenance of the project with funds raised through the collection of a special assessment levied against the land and premises benefited by maintenance of the project. The assessments to be levied may not exceed ~~one dollar and fifty cents~~ two dollars per acre [.40 hectare] annually on agricultural lands and may not exceed ~~one dollar and fifty cents~~ two dollars annually for each five hundred dollars of taxable valuation of nonagricultural property. No action is required for the establishment of the assessment district or the assessments except the water resource board must approve the maintenance and assessment therefor by a vote of two-thirds of the members and the board of county commissioners of the county in which the project is located must approve and levy the assessments to be made by a vote of two-thirds of its members. If a board that undertakes a project finds that the project may benefit lands in this state outside water resource district boundaries, the board shall provide notice to the water resource board where the benefited lands are located. The board of each water resource district containing lands benefited by a project must approve the project and assessment by vote of two-thirds of its members. The board of county commissioners in each county that contains lands benefited by a project must approve and levy the assessment to be made by vote of two-thirds of its members. If a project and assessment is not approved by all affected water resource boards and boards of county commissioners, the board of each water resource district and the board of county commissioners of each county shall meet to ensure that all common water management problems are jointly addressed. In addition, the water resource board that undertakes the project may proceed with the project if the board finances the cost of the project and does not assess land outside of the district. Before an assessment may be levied under this section, a public hearing must be held. The hearing must be preceded by notice as to date, time, location, and subject matter published in the official newspaper in the county or counties in which the proposed

assessment is to be levied. The notice must be published at least ten days but not more than thirty days before the public hearing.

Approved April 10, 2007

Filed April 11, 2007

**CHAPTER 556****HOUSE BILL NO. 1266**

(Representative Aarsvold)

(Senator Fischer)

**ASSESSMENT DRAIN MAINTENANCE**

AN ACT to amend and reenact sections 61-16.1-45 and 61-21-46 of the North Dakota Century Code, relating to maintenance of assessment drains.

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

**SECTION 1. AMENDMENT.** Section 61-16.1-45 of the North Dakota Century Code is amended and reenacted 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 the maintenance may not exceed ~~one dollar and fifty cents~~ two dollars per acre [.40 hectare] on any agricultural lands benefited by the drain. The district, at its own discretion, may utilize either of the following methods for levying special assessments for the maintenance:

1. Agricultural lands that 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~~ two dollars per acre [.40 hectare]. The assessment of other agricultural lands in the district must 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 must be assessed the 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 must be assessed uniformly throughout the entire assessed area. Nonagricultural property must be assessed an amount not to exceed one dollar for each five hundred dollars of taxable valuation of the 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 the drain, a water resource board may accumulate a fund in an amount not exceeding the sum produced by the maximum permissible levy for ~~four~~ six years.

If the cost of, or obligation for, the cleaning and repair of any drain exceeds the total amount that may be levied by the board in any ~~four-year~~ six-year period, the board shall obtain the approval of the majority of the landowners as determined by chapter 61-16.1 before obligating the district for the costs.

**SECTION 2. AMENDMENT.** Section 61-21-46 of the North Dakota Century Code is amended and reenacted as follows:

**61-21-46. Maximum levy - Accumulation of fund.** The levy in any year for cleaning out and repairing a drain may not exceed ~~one dollar and fifty cents~~ two dollars per acre [.40 hectare] on any agricultural lands in the drainage district.

1. Agricultural lands that 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~~ two dollars per acre [.40 hectare]. The assessment of other agricultural lands in the district must 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~~ two dollars per acre [.40 hectare]. Nonagricultural property must be assessed the sum in any one year as the ratio of the benefits under the original assessments or any reassessments bears to the assessment of agricultural land bearing the highest assessment.
2. Agricultural lands must be assessed uniformly throughout the entire assessed area. Nonagricultural property must be assessed an amount not to exceed one dollar for each five hundred dollars of taxable valuation of the 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 the drain, the board may accumulate a fund in an amount not exceeding the sum produced by the maximum permissible levy for ~~four~~ six years. If the cost of, or obligation for, the cleaning and repair of any drain exceeds the total amount that can be levied by the board in any ~~four-year~~ six-year period, the board shall obtain an affirmative vote of the majority of the landowners as determined by section 61-21-16 before obligating the district for the costs.

Approved March 6, 2007  
Filed March 7, 2007

**CHAPTER 557****HOUSE BILL NO. 1331**

(Representatives Aarsvold, Hanson, Metcalf)  
(Senators Heitkamp, Lindaas, Wardner)

**DRAIN OBSTRUCTIONS**

AN ACT to amend and reenact sections 61-16.1-51 and 61-21-43.1 of the North Dakota Century Code, relating to obstructions to drains.

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

**SECTION 1. AMENDMENT.** Section 61-16.1-51 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-51. Removal of obstructions to drain - Notice and hearing - Appeal - Injunction - Definition.** If a water resource board determines that an obstruction to a drain has been caused by the negligent act or omission of a landowner or tenant, the board shall notify the landowner by registered mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the obstruction, the opinion of the board as to its cause, and must state that if the obstruction is not removed within such period as the board determines, but not less than fifteen days, the board shall procure removal of the obstruction and assess the cost of the removal, or the portion the board determines appropriate, against the property of the landowner responsible. The notice must also state that the affected landowner, within fifteen days of the date the notice is mailed, may demand, in writing, a hearing on the matter. Upon receipt of the demand the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency the board may immediately apply to the appropriate district court for an injunction prohibiting a landowner or tenant from maintaining an obstruction. Assessments levied under the provisions of this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. A landowner aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided in section 28-34-01. A hearing as provided for in this section is not a prerequisite to an appeal. If the obstruction is located in a road ditch, the timing and method of removal must be approved by the appropriate road authority before the notice required by this section is given and appropriate construction site protection standards must be followed.

For the purposes of this section, "an obstruction to a drain" means a barrier to a watercourse, as defined by section 61-01-06, or an artificial drain, including if the watercourse or drain is located within a road ditch, which materially affects the free flow of waters in the watercourse or drain.

**SECTION 2. AMENDMENT.** Section 61-21-43.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-21-43.1. Removal of obstructions to drain - Notice and hearing - Appeal - Injunction.** If the board determines that an obstruction to a drain, including if the drain is located within a road ditch, has been caused by the negligent act or omission of a landowner or landowner's tenant, the board shall notify the landowner by registered mail at the landowner's post office of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the obstruction, the opinion of the board as to its cause, and must state that if the obstruction is not removed within the period the board determines, but not less than fifteen days, the board shall procure removal of the obstruction and assess the cost of the removal, or the portion the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner, within fifteen days of the date the notice is mailed, may demand in writing a hearing upon the matter. Upon receipt of the demand the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency the board may, immediately upon learning of the existence of the obstruction, apply to a court of proper jurisdiction for an injunction prohibiting the landowner or landowner's tenant to maintain the obstruction. Assessments levied under this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. A landowner aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided for in section 28-34-01. A hearing as provided for in this section is not a prerequisite to an appeal. If the obstruction is located in a road ditch, the timing and method of removal must be approved by the appropriate road authority before the notice required by this section is given and appropriate construction site protection standards must be followed.

Approved March 21, 2007  
Filed March 21, 2007



**CHAPTER 558****HOUSE BILL NO. 1265**

(Representatives Aarsvold, Hofstad, Nelson)

(Senator Lindaas)

**ASSESSMENT DRAIN CULVERTS**

AN ACT to create and enact a new section to chapter 61-21 of the North Dakota Century Code, relating to culverts for assessment drains.

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

**SECTION 1.** A new section to chapter 61-21 of the North Dakota Century Code is created and enacted as follows:

**Assessment drain culverts.** As part of the design and construction of a proposed assessment drain or the maintenance or reconstruction of an existing assessment drain, the board, upon approval of the appropriate road authority, may locate, relocate, size, and install culverts through roads which are not on the routes of assessment drains but which are within the assessment area and which are necessary for surface water to reach the assessment drain. The design and installation of culverts under this section must be consistent with chapters 24-03 and 24-06 and the streamcrossing and construction site protection standards prepared by the department of transportation and the state engineer.

Approved March 6, 2007

Filed March 7, 2007

**CHAPTER 559****SENATE BILL NO. 2345**

(Senators Fischer, Grindberg, Robinson)  
(Representatives Aarsvold, Carlson, Wieland)

**RED RIVER VALLEY WATER SUPPLY PROJECT  
BONDS**

AN ACT to authorize the state water commission to issue bonds for the Red River valley water supply project; to amend and reenact section 61-02.1-05 of the North Dakota Century Code, relating to the water development trust fund; and to provide a continuing appropriation.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:****SECTION 1. Legislative findings and intent - Authority to issue bonds.**

1. The legislative assembly finds that the provision of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the Red River valley and that construction of the Red River valley water supply project involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission assist in financing the cost of constructing the Red River valley water supply project through the issuance of bonds.
2. In furtherance of the public purpose set forth in subsection 1, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for construction of the Red River valley water supply project authorized and funded in part by the federal government and designed to provide reliable sources of water of sufficient quantity and quality to supply homes, businesses, industries, wildlife, and recreation in the Red River valley within this state.
3. This Act does not affect the state water commission's authority to otherwise issue bonds pursuant to chapter 61-02 or section 61-24.3-01.

**SECTION 2. Funding - Red River valley water supply project - Bond issuance amount.** The state water commission may provide the nonfederal share of funds necessary to construct the Red River valley water supply project by issuing bonds in an amount not to exceed forty million dollars plus the cost of issuance of the bonds, capitalized interest, and reasonably required reserves. The proceeds of any bonds issued under the authority provided in this section are appropriated to the state water commission for the purposes set forth in this Act.

**SECTION 3. Limitation of action.** An action may not be brought or maintained in any court in this state questioning the validity of any bonds issued as provided in this Act unless the action is commenced within thirty days after the adoption of the resolution of the state water commission authorizing the sale of

bonds. The state water commission may commence a special proceeding at any time after the effective date of this Act, in and by which the constitutionality and validity of the bonds to be issued pursuant to this Act may be judicially examined, approved and confirmed, or disapproved and disaffirmed. Proceedings must comply as nearly as possible with the procedure required for declaratory judgment proceedings.

**SECTION 4. Bonds payable from water development trust fund.**

1. Principal and interest on bonds issued for the Red River valley water supply project as provided in this Act are payable from the water development trust fund from funds transferred from the tobacco settlement trust fund.
2. Obligations issued as provided in this Act do not constitute a debt, liability, or obligation of the state of North Dakota or a pledge of the faith and credit of the state of North Dakota, but are payable solely from the sources as described in this Act.
3. The state water commission shall include in its submission to the governor for inclusion by the governor in the biennial executive budget of the state for each year of the respective biennium during the term of any bonds issued as provided in this Act an amount fully sufficient to pay the principal and interest required to be paid in each year of the biennium, if any, from moneys from the water development trust fund. If the governor does not include in the executive budget for any reason the amounts required to be included by this section, the state water commission shall request independently that the legislative assembly amend the executive budget appropriation so as to include the amounts.

**SECTION 5. State funding plan.**

1. The remaining sixty million dollars to comprise a total of one hundred million dollars to meet the one hundred million dollar state share of phase one of the Red River valley water supply project is to be funded over three bienniums. The sixty million dollars is to be derived from thirty million dollars from the general fund and thirty million dollars from the resources trust fund.
2. The state shall provide an additional one hundred million dollars of municipal, rural, and industrial water supply funds for phase two of the Red River valley water supply project, to meet the two hundred million dollar state share of the project.

**SECTION 6. AMENDMENT.** Section 61-02.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**61-02.1-05. Water development trust fund.** Moneys received by the state pursuant to the 1998 settlement agreement with tobacco product manufacturers, or any successor agreement, and any earnings on these moneys, must be deposited in the water development trust fund in the state treasury for use in paying for bonds issued as provided in this chapter and for other water projects as provided in section 54-27-25 and subsection 23 of section 54-44-04 and for the Red River valley water supply project as provided in this Act.

Approved March 30, 2007  
Filed March 30, 2007

**CHAPTER 560****SENATE BILL NO. 2096**  
(Natural Resources Committee)  
(At the request of the State Engineer)**SOVEREIGN LAND MANAGEMENT**

AN ACT to create and enact a new section to chapter 61-33 of the North Dakota Century Code, relating to sovereign land management regulation violations; to amend and reenact subsection 1 of section 20.1-02-15.1 and sections 61-03-21.3 and 61-33-05 of the North Dakota Century Code, relating to powers of the game and fish department, dangers in navigable waters, and powers of the state engineer; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 20.1-02-15.1 of the North Dakota Century Code is amended and reenacted as follows:

1. To enforce state laws and rules on any game refuge, game management area, or other land or water owned, leased, or managed by the department and on sovereign lands as defined by section 61-33-01.

**SECTION 2. AMENDMENT.** Section 61-03-21.3 of the North Dakota Century Code is amended and reenacted as follows:

**61-03-21.3. Removal, modification, or destruction of dangers in, on the bed of, or adjacent to a navigable lake waters.**

1. If the state engineer finds that buildings, structures, boat docks, debris, or other manmade objects, except a fence or corral, situated in, on the bed of, or adjacent to a lake waters that ~~has~~ have been determined to be navigable by a court are, or are imminently likely to be, a menace to life or property or public health or safety, the state engineer shall issue an order to the person responsible for the object. The order must specify the nature and extent of the conditions, the action necessary to alleviate, avert, or minimize the danger, and a date by which that action must be taken. If the state engineer determines that an object covered by flood insurance is imminently likely to be a menace to life or property or public health or safety, the date specified in the order for action to be taken may not precede the date on which the person is eligible to receive flood insurance proceeds. The If a building, structure, boat dock, debris, or other manmade object, except a fence or corral, is partially or completely submerged due to the expansion of navigable waters, the person responsible is the person who owns or has had control of the property on which the object is located; or if the property is inundated with water, the person who owned or had control of the property immediately before it became inundated submerged by water.
2. If the action is not taken by the date specified, but not less than twenty days from the date of service of the notice, the state engineer may

cause the action to be taken. The state engineer may require the action to be taken in less than twenty days if an emergency exists.

3. The state engineer may bring an action to enforce an order of the state engineer, or if the state engineer causes the action to be taken, the state engineer may:
  - a. Assess the costs of taking such action, or such portion as the state engineer determines, against any property of the person responsible; or
  - b. Bring a civil action against the person responsible to recover the costs incurred in taking the action.

If the state engineer chooses to recover costs by assessing the cost against property of the person responsible and the property is insufficient to cover the costs incurred, the state engineer may bring a civil action to recover any costs not recovered through the assessment process. Any assessments levied under this section must be collected in the same manner as other real estate taxes are collected and paid. Any costs recovered must be deposited in the fund from which the expenses were paid.

4. A person who receives an order, within ten days of the date of service of the order, may demand, in writing, a hearing on the matter. The demand for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the state engineer determines the issues, facts, and law to be presented are well-founded and not frivolous, and the request for a hearing was not made merely to interpose delay, the state engineer shall set a hearing date without undue delay.
5. In the event of an emergency, the state engineer may immediately apply to the district court of the county in which the property is located for an injunction ordering the person responsible to modify, remove, abate, or otherwise eliminate the dangerous condition.
6. Any person aggrieved by the action of the state engineer may appeal the decision to the district court of the county in which the land is located in accordance with chapter 28-32. A hearing as provided for in this section is a prerequisite to an appeal unless the hearing was denied by the state engineer.
7. If the state engineer has issued an order under this section with regard to a building, structure, boat dock, debris, or other manmade object that the state engineer has determined is imminently likely to be a menace to life or property or public health or safety, and it later becomes known that the object would not have become a menace, a person who has taken action required by the state engineer's order is entitled to compensation in an amount equal to the value of any property destroyed and reasonable costs incurred as a result of complying with the state engineer's notice.
8. Any person claiming compensation for the destruction of property or costs incurred under subsection 7 must file a claim with the state engineer in the form and manner required by the state engineer. Unless

the amount of compensation is agreed to between the claimant and the state engineer, the amount of compensation must be calculated in the same manner as compensation due for taking of property pursuant to the condemnation laws of this state. In determining compensation, the proceeds of any flood or other insurance or any other kind of compensatory payments must be subtracted from the amount paid.

**SECTION 3. AMENDMENT.** Section 61-33-05 of the North Dakota Century Code is amended and reenacted as follows:

**61-33-05. Duties and powers of the state engineer.** The state engineer shall manage, operate, and supervise all properties transferred to it by this chapter; may enter into any agreements regarding such property; may enforce all rights of the owner in its own name; may issue and enforce administrative orders and recover the cost of the enforcement from the party against which enforcement is sought; and may make and execute all instruments of release or conveyance as may be required pursuant to agreements made with respect to such assets, whether such agreements were made heretofore, or are made hereafter. The state engineer may enter agreements with the game and fish department or other law enforcement entities to enforce this chapter and rules adopted under this chapter.

**SECTION 4.** A new section to chapter 61-33 of the North Dakota Century Code is created and enacted as follows:

**Penalty.** A person who violates this chapter or any rule implementing this chapter is guilty of a class B misdemeanor unless a lesser penalty is indicated. A civil penalty may be imposed by a court in a civil proceeding or by the state engineer through an adjudicative proceeding pursuant to chapter 28-32. The assessment of a civil penalty does not preclude the imposition of other sanctions authorized by law, this chapter, or rules adopted under this chapter. The state engineer may bring a civil action to recover damages resulting from violations and may also recover any costs incurred.

Approved April 26, 2007  
Filed April 27, 2007

**CHAPTER 561****HOUSE BILL NO. 1215**

(Representatives Froelich, Herbel, Kempenich)  
(Senators Erbele, Taylor)

**LIVESTOCK WATER ASSISTANCE PROGRAM  
PROJECTS**

AN ACT to amend and reenact section 61-34-04 of the North Dakota Century Code, relating to drought livestock water assistance program maximum payments; and to declare an emergency.

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

<sup>286</sup> **SECTION 1. AMENDMENT.** Section 61-34-04 of the North Dakota Century Code is amended and reenacted as follows:

**61-34-04. Eligibility - Application for assistance.** Applicants with livestock water supply problems caused by drought may apply for assistance from the program. An applicant must first apply for water cost-share assistance from the United States department of agriculture stabilization and conservation service farm service agency. If cost-share assistance is denied by the service agency, the applicant may forward the application to the commission for consideration. An application forwarded to the commission must include a document from the United States department of agriculture stabilization and conservation farm service agency stating the reason for denial of cost-share assistance. The state engineer shall review all applications received by the commission. If the state engineer approves an application, the applicant may receive up to fifty percent of the cost ~~of the project~~, but in no event more than three thousand five hundred dollars per project with a limit of three projects per applicant. The state engineer shall provide funds for approved applications in accordance with rules and criteria for eligibility and only to the extent that funding is available. A drought livestock water assistance program project located on Indian land is eligible for the program.

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

Approved April 17, 2007  
Filed April 18, 2007

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<sup>286</sup> Section 61-34-04 was also amended by section 10 of Senate Bill No. 2020, chapter 46.



**CHAPTER 562****SENATE BILL NO. 2369**

(Senators Heitkamp, Fischer, G. Lee)  
(Representatives Brandenburg, Kretschmar, Kroeber)

**WATER DISTRICT BOND LIMITATIONS**

AN ACT to amend and reenact section 61-35-15 of the North Dakota Century Code, relating to revenue bonds issued by water districts.

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

**SECTION 1. AMENDMENT.** Section 61-35-15 of the North Dakota Century Code is amended and reenacted as follows:

**61-35-15. Revenue bonds.** A district may issue revenue bonds, not exceeding an aggregate total outstanding of ~~twenty-five~~ fifty million dollars, to finance construction of projects and incidental facilities authorized by this chapter. Issuance of revenue bonds must be approved by two-thirds of all of the members of the district board. The district shall pledge sufficient revenue from any revenue-producing facility constructed with the aid of revenue bonds for the payment of principal and interest on the bonds and shall establish rates for the facilities at a sufficient level to provide for the operation of such facilities and for the bond payments. Revenue bonds may not be a general obligation of any political subdivision and may not be secured by property taxes.

Approved March 12, 2007

Filed March 13, 2007

**CHAPTER 563****HOUSE BILL NO. 1268**

(Representative Carlson)  
(Senators Fischer, Heitkamp)

**LAKE AGASSIZ WATER AUTHORITY BOND DUTIES**

AN ACT to amend and reenact subsection 2 of section 61-39-14 of the North Dakota Century Code, relating to duties of the Lake Agassiz water authority relative to the issuance of bonds.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 61-39-14 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~Operate~~ Make certain any project financed by the authority is operated in an efficient and economical manner, enforce all water purchase and water sales contracts, and establish, levy, maintain, and collect related necessary or proper fees, tolls, rentals, rates, and other charges. Such fees, tolls, rental, rates, and other charges must be sufficient, after making due and reasonable allowances for contingencies and for a margin of error in the estimates, at least:
  - a. To pay all current expenses of operation and maintenance of any project;
  - b. To make all payments required under any water purchase contract the authority may execute;
  - c. To pay the interest and principal on the authority's notes and bonds as they become due;
  - d. To comply with the terms of the resolution authorizing the issuance of the bonds or any other contract or agreement with the holders of the refunding bonds; and
  - e. To meet any other obligations of the authority that are charges, liens, or encumbrances upon the revenues of the authority.

Approved March 9, 2007  
Filed March 12, 2007

# WEAPONS

## CHAPTER 564

**SENATE BILL NO. 2213**  
(Senators Lyson, Anderson, Heitkamp)  
(Representatives Carlisle, Thoreson)

### FIREARM POSSESSION BY OFFENDERS

AN ACT to amend and reenact section 62.1-02-01 of the North Dakota Century Code, relating to possession of firearms by offenders.

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

**SECTION 1. AMENDMENT.** Section 62.1-02-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **62.1-02-01. Persons who are not to possess firearms - Penalty.**

1. A person who has been convicted anywhere ~~for~~ of a felony offense involving violence or intimidation, ~~as defined in violation of chapters 12.1-16 through 12.1-25; or an equivalent felony offense of another state or the federal government~~ is prohibited from owning a firearm or having one in possession or under control from the date of conviction and continuing for a period of ten years after the date of conviction or the date of release from incarceration, parole, or probation, whichever is latest.
2. A person who has been convicted anywhere of any a felony offense of this or another state or the federal government not provided for in subsection 1 or who has been convicted of a class A misdemeanor offense involving violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an equivalent offense of another state or the federal government and ~~that crime~~ the offense was committed while using or possessing a firearm ~~or, a dangerous weapon, or,~~ or, as defined in ~~chapters 12.1-16 through 12.1-25~~ subsections 7 and 8 of section 12.1-01-04, a destructive device or an explosive, is prohibited from owning a firearm or having one in possession or under control from the date of conviction and continuing for a period of five years after the date of conviction or the date of release from incarceration, parole, or probation, whichever is latest.
3. A person who is or has ever been diagnosed and confined or committed to a hospital or other institution in this state or elsewhere by a court of competent jurisdiction, other than a person who has had the petition that provided the basis for the diagnosis, confinement, or commitment dismissed under section 25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another 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, while under the direct supervision of an adult, may 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 ~~a determination by a jury or court that a the person committed one of the above-mentioned crimes upon a verdict of guilt, a plea of guilty, or a plea of nolo contendere even though the court suspended execution of sentence in accordance with subsection 3 of section 12.1-32-02 or deferred imposition of sentence in accordance with subsection 4 of section 12.1-32-02, placed the defendant on probation, the defendant's conviction has been reduced in accordance with subsection 9 of section 12.1-32-02 or section 12.1-32-07.1, or a determination under chapter 27-20 that the person committed a delinquent act equivalent to the offenses provided in subsection 1 or 2;~~

1. The court suspended execution of sentence in accordance with subsection 3 of section 12.1-32-02;
2. The court deferred imposition of sentence in accordance with subsection 4 of section 12.1-32-02;
3. The court placed the person on probation;
4. The person's conviction has been reduced in accordance with subsection 9 of section 12.1-32-02 or section 12.1-32-07.1;
5. Sentence dispositions, sentence reductions, or offense determinations equivalent to this section were imposed or granted by a court, board, agency, or law of another state or the federal government; or
6. The person committed an offense equivalent to an offense described in subsection 1 or 2 when that person was subject to juvenile adjudication or proceedings and a determination of a court under chapter 27-20 or of a court of another state or the federal government was made that the person committed the delinquent act or offense.

Approved March 7, 2007  
Filed March 8, 2007

# WEIGHTS, MEASURES, AND GRADES

## CHAPTER 565

### SENATE BILL NO. 2077

(Government and Veterans Affairs Committee)  
(At the request of the Public Service Commission)

## WEIGHTS AND MEASURES DEVICE INSTALLATION AND STANDARDS

AN ACT to amend and reenact subsection 1 of section 54-17.7-08 as created by House Bill No. 1128, section 64-02-02, and subsection 1 of section 64-02-07 of the North Dakota Century Code, relating to the applicability of pipeline safety jurisdiction to the pipeline authority, the installation of weighing or measuring devices, and the maintenance of state weights and measures standards.

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

<sup>287</sup> **SECTION 1. AMENDMENT.** If House Bill No. 1128 is approved by the sixtieth legislative assembly and becomes effective, subsection 1 of section 54-17.7-08 is amended and reenacted as follows:

1. Until sold or disposed of by the authority, the authority and the pipeline facilities built under this chapter are exempt from the provisions of title 49 except for chapter 49-22 and ~~section~~ sections 49-02-01.2 and 49-07-05.1. Upon sale or disposal by the authority, pipeline facilities built under this chapter are subject to the provisions of title 49.

**SECTION 2. AMENDMENT.** Section 64-02-02 of the North Dakota Century Code is amended and reenacted as follows:

**64-02-02. Weights and measures - Supervision by public service commission - Installation of scales weighing or measuring devices under special variance permit.** All weighing or measuring devices in this state must be supervised and controlled by the commission. ~~Permits~~ A variance permit for the installation or relocation of ~~scales a device~~ deviating from requirements under this chapter may be issued by the commission when the ~~scale device~~ meets service requirements within accepted tolerances. ~~Applications for a permit authorizing deviations must~~ The commission may request that an application for a variance permit include complete construction plans and a statement of the specific reasons why deviations are necessary or desirable. The commission may impose limitations or conditions on the construction and use of scales any weighing or measuring device.

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<sup>287</sup> Section 54-17.7-08 was created by section 2 of House Bill No. 1128, chapter 464.

**SECTION 3. AMENDMENT.** Subsection 1 of section 64-02-07 of the North Dakota Century Code is amended and reenacted as follows:

1. Maintain the calibration of the state weights and measures standards that are traceable to the United States standards. All secondary standards must be calibrated by ~~the commission~~ a national institute of standards and technology-recognized metrology laboratory as often as the commission deems necessary.

Approved April 4, 2007  
Filed April 5, 2007

# WORKERS' COMPENSATION

## CHAPTER 566

### SENATE BILL NO. 2042

(Legislative Council)  
(Workers' Compensation Review Committee)

#### WSI PRESUMPTION OF COMPENSABILITY

AN ACT to amend and reenact section 65-01-15.1 of the North Dakota Century Code, relating to the workers' compensation presumption of compensability for firefighters and law enforcement officers; and to provide for retroactive application.

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

**SECTION 1. AMENDMENT.** Section 65-01-15.1 of the North Dakota Century Code is amended and reenacted as follows:

**65-01-15.1. Presumption of compensability for certain conditions of full-time paid firefighters and law enforcement officers.**

1. Any condition or impairment of health of a full-time paid firefighter or law enforcement officer caused by lung or respiratory disease, hypertension, heart disease, or an exposure to a bloodborne pathogen as defined by section 23-07.5-01 occurring in the course of employment, or occupational cancer in a full-time paid firefighter, resulting in total or partial disability or death is presumed to have been suffered in the line of duty. The condition or impairment of health may not be attributed to any disease existing before that total or partial disability or death unless the contrary is shown by competent evidence.
2. As used in this section, an occupational cancer is one which arises out of employment as a full-time paid firefighter and is due to injury due to exposure to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty as a full-time paid firefighter.
3. A full-time paid firefighter or law enforcement officer is not eligible for the benefit provided under this section unless that full-time paid firefighter or law enforcement officer has completed five years of continuous service and has successfully passed a medical examination which fails to reveal any evidence of such a condition. An employer shall require a medical examination upon employment, for any employee subject to this section. After the initial medical examination, an employer shall require at least a periodic medical examination as follows: for one to ten years of service, every five years; for eleven to twenty years of service, every three years; and for twenty-one or more years of service, every year. The periodic medical examination, at a minimum, must consist of a general medical history of the individual and the individual's family; an occupational history including contact with and an exposure to hazardous materials,

toxic products, contagious and infectious diseases, and to physical hazards; a physical examination including measurement of height, weight, and blood pressure; and laboratory and diagnostic procedures including a nonfasting total blood cholesterol test and papanicolaou smear for women. If the medical examination reveals that an employee falls into a recognized risk group, the employee must be referred to a qualified health professional for future medical examination. If a medical examination produces a false positive result for a condition covered under this section, the organization shall consider the condition to be a compensable injury. In the case of a false positive result, neither the coverage of the condition nor the period of disability may exceed fifty-six days. This section does not affect an employee's responsibility to document that the employee has not used tobacco as required under section 65-01-15. Results of the examination must be used in rebuttal to a presumption afforded under this section.

4. For purposes of this section, "law enforcement officer" means a person who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, a county sheriff's department, or a city police department.
5. The presumption does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed for ten years or less, if the condition or impairment is diagnosed more than two years after the employment as a full-time paid firefighter or law enforcement officer ends. The presumption also does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed more than ten years, if the condition or impairment is diagnosed more than five years after the employment as a full-time paid firefighter or law enforcement officer ends.

**SECTION 2. RETROACTIVE APPLICATION.** This Act applies to all false positive results occurring on or after December 1, 2004.

Approved March 30, 2007  
Filed March 30, 2007



**CHAPTER 567****HOUSE BILL NO. 1460**

(Representatives Skarphol, Carlson, Dosch)  
(Senator Christmann)

**WSI BOARD MEMBERSHIP AND SPENDING  
AUTHORITY**

AN ACT to create and enact a new section to chapter 65-02 of the North Dakota Century Code, relating to employee awards and incentive spending authority; to amend and reenact section 65-02-03.1 of the North Dakota Century Code, relating to the workforce safety and insurance board membership; to provide for a legislative council study; and to provide for application and transition.

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

**SECTION 1. AMENDMENT.** Section 65-02-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**65-02-03.1. Workforce safety and insurance board of directors - Appointment.**

1. The board consists of eleven members. The appointment and replacement of the members must ensure that:
  - a. Six board members represent employers in this state which maintain active accounts with the organization; ~~at least one of which must be a participant in the risk management program, at least two.~~ Two of which the employer members must be employers with annual premiums, which at the time of the member's initial appointment were greater than twenty-five thousand dollars; at least; one of which the employer members must be an employer with an annual premium of, which at the time of the member's initial appointment was at least ten thousand dollars but less than twenty-five thousand dollars; at least; one of which the employer members must be an employer with an annual premium of, which at the time of the member's initial appointment was less than ten thousand dollars; and at least one two of the employer members must be employer at large representative representatives. Except for the employer at large ~~representative representatives~~, each employer representative must be a principal owner, chief executive officer, or chief financial officer of the employer.
  - b. Three members represent employees; ~~at least one member must have received workforce safety and insurance benefits; and at least.~~ Of the three employee members, one member must represent organized labor and one other member must have received workforce safety and insurance wage-loss benefits at some time during the ten years before the member's initial appointment.

- c. One member is a member of the North Dakota medical association.
  - d. One member is a member at large who must be a resident of this state and at least twenty-one years of age.
2. Board members shall serve four-year terms; ~~except the initial term of office of the member at large to be appointed on August 1, 2003, expires on December 31, 2006, and the term of office of the medical association member whose term of office became effective January 1, 2003, expires on December 31, 2006.~~ The governor shall make the necessary appointments to ensure the term of office of members begins on January first of each odd-numbered year. ~~Board members~~ A board member whose initial appointment was before August 1, 2007, may not serve more than three consecutive terms and a board member whose initial appointment was after July 31, 2007, may not serve more than two consecutive terms.
- a. A departing member representing an employer must be replaced by a member representing an employer, most of whose employees are in a different rate classification than those of the employer represented by the departing member. The governor shall appoint the ~~replacement~~ member for a ~~departing an~~ employer representative ~~or medical association representative~~ from a list of three potential candidates submitted by ~~the board~~. The board shall interview an employer representative or a medical representative before placing that candidate's name on the list of replacement member candidates submitted to the governor a coordinating committee appointed by the governor, composed of representatives from the associated general contractors of North Dakota, the North Dakota petroleum council, the greater North Dakota chamber of commerce, the North Dakota motor carriers association, the North Dakota healthcare association, the national federation of independent business, the lignite energy council, and other statewide business interests.
  - b. The governor shall select the ~~replacement~~ member for the ~~departing~~ organized labor employee representative from a list of three ~~names~~ of potential candidates submitted by an organization that is statewide in scope and which through ~~its~~ the organization's affiliates embraces a cross section and a majority of organized labor in this state.
  - c. The governor shall select the ~~replacement member for a departing nonorganized labor two~~ employee representative. The governor shall appoint the replacement member for representatives who do not represent organized labor and the member at large from a list of three candidates submitted by the board.
  - d. The governor shall select the member representing the North Dakota medical association from a list of three potential candidates submitted by the North Dakota medical association.
  - e. Within the thirty days following receipt of a list of potential candidates representing employers, organized labor, or the North Dakota medical association, the governor may reject the list and

request that the submitting entity submit a new list of potential candidates.

3. Vacancies in the membership of the board must be filled for the unexpired term by appointment by the governor as provided in this ~~subsection~~ section.

**SECTION 2.** A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

**Spending authority - Limited.** Notwithstanding any other law enacted by the sixtieth legislative assembly, any statement of legislative intent, any statement of purpose of amendment, or other provision of law, the organization may not expend funds for the purpose of providing workers' compensation education or training for public officials other than the director and members of the board, or for providing awards, other than service awards or other awards or incentives allowed under law and applicable to executive branch agencies. For purposes of this section, award does not include a nonwage, cash disbursement to an organization employee through a performance-based system for employee recognition.

**SECTION 3. APPLICATION AND TRANSITION.** Section 1 of this Act applies to all board member appointments occurring after July 31, 2007. The board member serving on August 1, 2007, as the representative of the risk management program shall serve the remainder of the appointed term as the employer at-large representative. The employee board member serving on August 1, 2007, as the employee who has received workforce safety and insurance benefits shall continue to serve through the expiration of the member's appointed term, regardless of the member's wage-loss benefit history.

**SECTION 4. WORKFORCE SAFETY AND INSURANCE - LEGISLATIVE COUNCIL STUDY.** The legislative council shall consider studying, during the 2007-08 interim, the workforce safety and insurance governance changes made during the 2007 legislative session. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Approved April 30, 2007  
Filed May 1, 2007

**CHAPTER 568****SENATE BILL NO. 2092**

(Industry, Business and Labor Committee)

(At the request of the Office of Management and Budget)

**WORKERS' COMPENSATION FUND EXPENDITURES**

AN ACT to amend and reenact subsection 2 of section 65-04-03.1 of the North Dakota Century Code, relating to expenditures from the workers' compensation fund.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 65-04-03.1 of the North Dakota Century Code is amended and reenacted as follows:

2. Workforce safety and insurance premiums from state entities covered by chapter 32-12.2 must be deposited in the risk management ~~workforce safety and insurance~~ workers' compensation fund. The state investment board shall invest this fund in accordance with chapter 21-10. Funds received as contributions from state entities, all other payments deposited in this fund, and interest and income received on investments are appropriated on a continuing basis for the purposes of this fund. The purposes of this fund are to pay workforce safety and insurance premiums for state agencies ~~and to pay~~ workforce safety and insurance claims costs not covered by the deductible contract, and costs associated with workers' compensation loss control programs. The risk management division of the office of management and budget shall administer this fund. Section 54-44.1-11 does not apply to this fund.

Approved March 7, 2007

Filed March 8, 2007

**CHAPTER 569****SENATE BILL NO. 2123**

(Industry, Business and Labor Committee)  
(At the request of Workforce Safety and Insurance)

**WSI PREMIUMS**

AN ACT to amend and reenact sections 65-04-04, 65-04-15, 65-04-17, 65-04-19.1, 65-05-28.1, and 65-06.2-04 of the North Dakota Century Code, relating to an employer's certificate of premium payment, release of confidential information, the maximum experience rating of employers, premium discounts in risk management programs, preferred providers, and roughrider industries; and to provide for application.

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

**SECTION 1. AMENDMENT.** Section 65-04-04 of the North Dakota Century Code is amended and reenacted as follows:

**65-04-04. Employers obligated to pay premiums - Premium and certificates to be mailed.** Each employer subject to this title shall pay into the fund annually the amount of premiums determined and fixed by the organization for the employment or occupation of the employer. The amount must be determined by the classifications, rules, and rates made and published by the organization and must be based on a proportion of the annual expenditure of money by the employer for the service of persons subject to the provisions of this title. The organization shall mail to the employer a certificate specifying that the payment has been made. The certificate, attested by the seal of the organization, is prima facie evidence of the payment of the premium. Notwithstanding the provisions of section 65-04-15, the certificate may reflect the employer has paid the minimum premium and has ~~estimated no wages employees~~ for the period indicated on the certificate. If an employer defaults on premium payments after a certificate has been issued, the organization may revoke that employer's certificate. The organization shall provide that premiums to be paid by school districts, townships, and all public corporations or agencies, except municipal corporations, fall due at the end of the fiscal year of that entity, and that premiums to be paid by all municipal corporations fall due at the end of the calendar year, and may make provisions so that premiums of other employers fall due on different or specified dates. For the purpose of effectuating different or specified due dates the organization may carry new or current risks for a period of less than one year and not to exceed eighteen months, either by request of the employer or action of the organization. An employer subject to this chapter shall display in a conspicuous manner at the workplace and in a sufficient number of places to reasonably inform employees of the fact, a certificate of premium payment showing compliance with this chapter and the toll-free telephone number used to report unsafe working conditions and actual or suspected workforce safety and insurance fraud. Any employer subject to this chapter is liable to pay a civil penalty of two hundred fifty dollars for failure to display the notice of compliance and the toll-free telephone number as required by this section.

**SECTION 2. AMENDMENT.** Section 65-04-15 of the North Dakota Century Code is amended and reenacted as follows:

**65-04-15. Information in employer's files confidential - Exceptions - Penalty if employee of organization divulges information.** The information contained in an employer's file is not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota; is for the exclusive use and information of the organization or its agents in the discharge of the organization's official duties; and is not open to the public nor usable in any court in any court action or proceeding unless the organization is a party to that court action or proceeding. The information contained in the file, however, may be tabulated and published by the organization in statistical form for the use and information of the state departments and of the public. Upon request, the organization shall disclose the rate classification of an employer to the requester; however, the organization may not disclose any information that would reveal the amount of payroll upon which that employer's premium is being paid or the amount of premium the employer is paying. The organization may disclose whether an employer's file is active, canceled, closed, pending, ~~or delinquent,~~ or uninsured. The information in the employer's file may not be released in aggregate form, except to those persons contracting with the organization for exchange of information pertaining to the administration of this title ~~or,~~ except upon written authorization by the employer for a specified purpose, or at the discretion of the organization with regard to delinquent and uninsured employers. Disclosure by a public servant of information contained in an employer's report, except as otherwise allowed by law, is a violation of section 12.1-13-01. Anyone who is convicted under section 12.1-13-01 is disqualified from holding any office or employment with the organization.

The organization may, upon request of the state tax commissioner or the secretary of state, furnish to them a list of employers showing only the names, addresses, and organization file identification numbers of such employers as those files relate to this chapter; provided, that any such list so furnished must be used by the tax commissioner or the secretary of state only for the purpose of administering their duties. The organization may provide any state or federal agency information obtained pursuant to the administration of this title. Any information so provided must be used only for the purpose of administering the duties of that state or federal agency. Whenever the organization obtains information on activities of a contractor doing business in this state of which officials of the secretary of state, job service North Dakota, or tax commissioner may be unaware and that may be relevant to the duties of those officials, the organization shall provide any relevant information to those officials for the purpose of administering their duties. The organization may provide any state agency or a private entity with a list of names and addresses of employers for the purpose of jointly publishing or distributing publications or other information pursuant to section 54-06-04.3. Any information so provided may only be used for the purpose of jointly publishing or distributing publications or other information as provided in section 54-06-04.3.

**SECTION 3. AMENDMENT.** Section 65-04-17 of the North Dakota Century Code is amended and reenacted as follows:

**65-04-17. Experience rating of employers.** The organization may establish a system for the experience rating of risks of employers contributing to the fund, and such system shall provide for the credit rating and the penalty rating of individual risks within such limitations as the organization may establish from time to time.

In calculating the experience rating, the organization shall determine the ~~maximum and minimum rates~~ rate for each employment classification by:

- 1- ~~Multiplying the required average premium rate by one and seventy-five hundredths to get the maximum rate assigned to an employer with a negative experience rating; and~~
- 2- ~~Multiplying multiplying the required average premium rate by twenty-five hundredths to get the minimum rate assigned to an employer with a positive experience rating.~~

The organization may not amend its experience rating system by emergency rulemaking.

**SECTION 4. AMENDMENT.** Section 65-04-19.1 of the North Dakota Century Code is amended and reenacted as follows:

**65-04-19.1. Premium discount for implementation of ~~preapproved risk management program programs~~.** Any employer who ~~implements or maintains~~ achieves the benchmarks outlined by the organization's risk management programs ~~approved by the organization is entitled to eligible for~~ a discount in the annual premium ~~the employer must pay to the organization~~ for the year following the year in which the risk management ~~programs~~ program's benchmarks are ~~implemented or maintained~~. The organization may not apply the discount to an employer's premium ~~unless the organization has approved the programs implemented by the employer achieved~~.

**SECTION 5. AMENDMENT.** Section 65-05-28.1 of the North Dakota Century Code is amended and reenacted as follows:

**65-05-28.1. Employer to select preferred provider.** Notwithstanding section 65-05-28, ~~an~~ any employer subject to this title ~~who maintains a risk management program approved by the organization~~ may select a preferred provider to render medical treatment to employees who sustain compensable injuries. "Preferred provider" means a designated provider or group of providers of medical services, including consultations or referral by the provider or providers.

**SECTION 6. AMENDMENT.** Section 65-06.2-04 of the North Dakota Century Code is amended and reenacted as follows:

**65-06.2-04. Workers' compensation coverage for inmates engaged in work programs through roughrider industries.** The director of the department of corrections and rehabilitation may elect to provide and request from the organization a program of modified workers' compensation coverage established under this chapter and according to administrative rules and fee schedules of this chapter. ~~Roughrider industries shall qualify for the organization's risk management program before the organization may provide the modified workers' compensation coverage.~~ The modified workers' compensation coverage ~~would be~~ is for inmates incarcerated at the penitentiary and engaged in work in a prison industries work program through roughrider industries, whether the program is operated by roughrider industries or by contract with another entity or private employer. An inmate who sustains a compensable injury arising out of and in the course of work in a prison industries work program through roughrider industries may only receive workforce safety and insurance benefits under the modified workers' compensation coverage established for that purpose.

**SECTION 7. APPLICATION.** Section 3 of this Act applies to all employer accounts incepting or renewing after July 1, 2008.

Approved April 12, 2007  
Filed April 13, 2007



**CHAPTER 570****HOUSE BILL NO. 1038**

(Legislative Council)

(Workers' Compensation Review Committee)

**WORKERS' COMPENSATION BENEFITS**

AN ACT to create and enact a new section to chapter 65-05 of the North Dakota Century Code, relating to workers' compensation additional benefits payable; to amend and reenact subsection 5 of section 65-05-07 and sections 65-05-16, 65-05.1-08, and 65-05.2-01 of the North Dakota Century Code, relating to workers' compensation benefits for the catastrophically injured, additional benefits payable, death benefits, supplemental benefits, loans for education; to provide for application; and to declare an emergency.

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

<sup>288</sup> **SECTION 1. AMENDMENT.** Subsection 5 of section 65-05-07 of the North Dakota Century Code is amended and reenacted as follows:

5. If the injured employee sustained a catastrophic injury, as defined in chapter 65-05.1:
  - a. The organization may not pay more than an amount not to exceed fifty thousand dollars to provide permanent additions, remodeling, or adaptations to real estate it determines necessary for a worker who sustains a catastrophic injury as defined in chapter 65-05.1. The fifty thousand dollar limit is for the life of the injured employee, regardless of any subsequent claim. This subsection subdivision does not allow the organization to purchase any real estate or motor vehicles.
  - b. The organization may pay an amount not to exceed one hundred thousand dollars to provide the most cost-effective, specially equipped motor vehicle or vehicle adaptations it determines medically necessary. The organization may establish factors to be used in determining whether a specially equipped motor vehicle or adaptation is necessary. Under this subdivision, the organization may not pay for insurance of or maintenance of the motor vehicle. Within the dollar limit and under this subdivision, the organization may pay for vehicle or adaptation replacement purchases. The dollar limit is for the life of the injured employee, regardless of any subsequent claim.

**SECTION 2.** A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

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<sup>288</sup> Section 65-05-07 was also amended by section 1 of House Bill No. 1411, chapter 571.

**Additional benefit payable - Alternative calculation.**

1. This section applies to an injured employee who has a claim for which:
  - a. A compensable injury was incurred before August 1, 1995;
  - b. The date of first disability or the date of successful reapplication under subsection 1 of section 65-05-08 was after July 31, 1995; and
  - c. The injured employee received a determination of permanent and total disability before August 1, 2007.
2. An injured employee who meets the requirements of subsection 1 is entitled to an alternative calculation of additional benefits payable instead of the calculation provided for under section 65-05-09.4. For the limited purpose of this alternative calculation, the organization shall use the calculation established under section 65-05-09.4 and shall consider that the injured employee's pre-August 1, 1995, date of injury is also the injured employee's date of first disability.

**SECTION 3. AMENDMENT.** Section 65-05-16 of the North Dakota Century Code is amended and reenacted as follows:

**65-05-16. Death benefits payable.**

1. The organization may pay benefits under this chapter in the case of the death of an injured employee as the direct result of an injury sustained in the course of the injured employee's employment when:
  - a. If there has been no disability preceding death, the death occurs within one year after the date of the injury;
  - b. If there has been disability preceding death, the death occurs within one year after the cessation of disability resulting from the injury; ~~or~~
  - c. If there has been disability ~~which~~ that has continued to the time of death, the death occurs within six years after the date of injury; or
  - d. If there has been disability that has continued to the time of death, the death occurs more than six years after the date of injury, and the injured employee has been designated catastrophically injured as defined under section 65-05.1-06.1.
2. The organization may not pay death benefits unless a claim is submitted within two years of the death and:
  - a. The death is a direct result of an accepted compensable injury; or
  - b. If ~~no~~ a claim was not submitted by the deceased, the claim for death benefits is submitted within two years of the injury.

**SECTION 4. AMENDMENT.** Section 65-05.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**65-05.1-08. Workforce safety and insurance educational revolving loan fund - Continuing appropriation.**

1. The organization may establish a revolving loan fund to provide a low-interest loan to an individual who has suffered a compensable injury injured employee or to a surviving spouse or dependent child of an injured employee whose death resulted from a compensable injury under section 65-05-16. The loan must be used to pursue an education at an accredited institution of higher education or an institution of technical education. In order to be eligible for a loan under this section, an individual must have obtained a high school diploma or its equivalent and either must be ineligible for retraining under this chapter or must have exhausted training and education benefits. The Bank of North Dakota and the organization shall establish eligibility requirements and make application determinations based on the established criteria. The application must require an applicant to demonstrate a viable education plan that will enable the individual to achieve gainful employment.
2. The total amount loaned annually under this section may not exceed two million five hundred thousand dollars. The maximum amount payable on behalf of an applicant may not exceed fifty thousand dollars and must be payable within five years. A loan must be repaid within a period not to exceed twenty years. A loan must be repaid at an interest rate established by the organization which may not exceed the rate of one percent below the Bank of North Dakota's prime interest rate. The organization shall pay the Bank of North Dakota a negotiated fee for administering and servicing loans under this section. At the board's discretion, moneys to establish and maintain the revolving loan fund must be appropriated from the organization's workforce safety and insurance fund. The revolving loan fund is a special fund and must be invested pursuant to section 21-10-06. Investment income and collections of interest and principal on loans made from the revolving loan fund are appropriated on a continuing basis to maintain the fund and provide loans in accordance with this section. The board, as determined necessary, may transfer uncommitted moneys of the revolving loan fund to the workforce safety and insurance fund.

**SECTION 5. AMENDMENT.** Section 65-05.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**65-05.2-01. Eligibility for supplementary benefits.**

1. A For claims filed before January 1, 2006, a workforce safety and insurance claimant who is receiving permanent total disability benefits, or death benefits, and who has been receiving disability or death benefits for a period of seven consecutive years is eligible for supplementary benefits. Eligibility for supplementary benefits under this subsection lasts as long as the claimant is entitled to permanent total disability benefits or death benefits.
2. For claims filed after December 31, 2005, a workforce safety and insurance claimant who is receiving permanent total disability benefits or death benefits and who has been receiving disability or death benefits for a period of at least three consecutive years is eligible for supplementary benefits. Eligibility for supplementary benefits under this

subsection lasts as long as the claimant is entitled to permanent total disability benefits or death benefits.

**SECTION 6. APPLICATION.** Section 1 of this Act applies to all purchases and repairs that take place on or after the effective date of this Act, and section 3 of this Act applies to claims for death benefits filed on or after the effective date of this Act.

**SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 29, 2007

Filed March 28, 2007

**CHAPTER 571****HOUSE BILL NO. 1411**

(Representative N. Johnson)

**WSI BENEFITS FOR PROPERTY AND VEHICLE  
MODIFICATION**

AN ACT to amend and reenact subsection 5 of section 65-05-07 of the North Dakota Century Code, relating to workers' compensation benefits for modification of real estate and vehicles; to provide for application; and to declare an emergency.

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

<sup>289</sup> **SECTION 1. AMENDMENT.** Subsection 5 of section 65-05-07 of the North Dakota Century Code is amended and reenacted as follows:

5. The Under this section the organization may modify real estate and may provide for adaptations and modifications to motor vehicles as follows:
  - a. In the case of an injured employee who sustained a catastrophic injury, as defined in chapter 65-05.1, the organization may not pay more than an amount not to exceed fifty thousand dollars to provide permanent additions, remodeling, or adaptations to real estate it determines necessary for a worker who sustains a catastrophic injury as defined in chapter 65-05.1. The fifty thousand dollar limit is for the life of the injured employee, regardless of any subsequent claim. This subsection subdivision does not allow the organization to purchase any real estate or motor vehicles.
  - b. In the case of an injured employee who sustained a catastrophic injury, as defined in chapter 65-05.1, the organization may pay an amount not to exceed one hundred thousand dollars to provide the most cost-effective, specially equipped motor vehicle or vehicle adaptations the organization determines medically necessary. The organization may establish factors to be used in determining whether a specially equipped motor vehicle or adaptation is necessary. Under this subdivision, the organization may not pay for insurance of or maintenance of the motor vehicle. Within the dollar limit and under this subdivision, the organization may pay for vehicle or adaptation replacement purchases. The dollar limit is for the life of the injured employee, regardless of any subsequent claim.
  - c. In the case of an injured employee who has not sustained a catastrophic injury, as defined in chapter 65-05.1, the organization

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<sup>289</sup> Section 65-05-07 was also amended by section 1 of House Bill No. 1038, chapter 570.

may provide the benefits under subdivisions a and b if the organization determines the benefits would be cost-effective and appropriate because of exceptional circumstances as determined by the organization.

**SECTION 2. APPLICATION.** Section 1 of this Act applies to all purchases and repairs that take place on or after the effective date of this Act.

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

Approved March 23, 2007

Filed March 23, 2007

**CHAPTER 572****HOUSE BILL NO. 1140**

(Representative Keiser)

(Senator Klein)

**WSI INFLATIONARY ADJUSTMENTS**

AN ACT to create and enact a new section to chapter 65-05 of the North Dakota Century Code, relating to a workers' compensation inflationary adjustment for injured employees with long-term temporary partial disabilities; and to provide for application.

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

**SECTION 1.** A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

**Long-term temporary partial disability inflation adjustment.** This benefit only applies to claims with a date of first disability or date of successful reapplication occurring after June 30, 1991. For these claims, beginning on the first day of July immediately following the fifth full year of partial disability and every year thereafter, an injured employee who has received a waiver of the five-year cap on partial disability benefits under section 65-05-10 is eligible for a lump sum inflation adjustment. The organization shall calculate the lump sum inflation adjustment under this section on July first of each year by multiplying the previous year's percent increase in the state's average weekly wage, if any, by the total amount of partial disability payments paid to the injured employee in the preceding twelve months, including the preceding year's inflationary adjustment award.

**SECTION 2. APPLICATION.** This Act applies to all workforce safety and insurance claimants who are eligible for benefits on or after the effective date of this Act, regardless of the date of injury.

Approved March 15, 2007

Filed March 15, 2007

**CHAPTER 573****SENATE BILL NO. 2389**

(Senators Nething, Klein, Robinson)  
(Representatives Amerman, Kasper)

**WSI PERMANENT IMPAIRMENT AWARDS**

AN ACT to amend and reenact section 65-05-12.2 of the North Dakota Century Code, relating to workers' compensation permanent impairment awards; and to provide for application.

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

**SECTION 1. AMENDMENT.** Section 65-05-12.2 of the North Dakota Century Code is amended and reenacted as follows:

**65-05-12.2. Permanent impairment - Compensation - Time paid.** ~~When A~~ permanent impairment is not intended to be a periodic payment and is not intended to reimburse the employee for specific expenses related to the injury or wage loss. If a compensable injury causes permanent impairment, the organization shall determine a permanent impairment award on the following terms:

1. If the compensable injury causes permanent impairment and the permanent impairment award payable by the organization is at least two thousand dollars, the injured employee may defer payment of the permanent impairment award for a period of time not to exceed the date the employee reaches age sixty-five. A permanent impairment award payable by the organization under this subsection must be paid to the employee in a lump sum that consists of the amount of the award plus any interest that has accrued at the actuarial discount rate in use by the organization. The actuarial discount rate applied to the award is the average actuarial discount rate in effect for the period of deferment of the employee's award. The organization shall adopt rules implementing any necessary procedures for award payments made under this subsection.
2. The organization shall calculate the amount of the award by multiplying thirty-three and one-third percent of the average weekly wage in this state on the date of the impairment evaluation, rounded to the next highest dollar, by the ~~number of weeks~~ permanent impairment multiplier specified in subsection 10.
3. The organization shall notify the employee by certified mail, to the last-known address of the employee, when that employee becomes potentially eligible for a permanent impairment award. After the organization has notified the employee, the employee shall file, within one hundred eighty days from the date the employee was notified, a written request for an evaluation for permanent impairment. Failure to file the written request within the one hundred eighty-day period precludes an award under this section.
4. An injured employee is entitled to compensation for permanent impairment under this section only for those findings of impairment that



are permanent and which were caused by the compensable injury. The organization may not issue an impairment award for impairment findings due to unrelated, noncompensable, or preexisting conditions, even if these conditions were made symptomatic by the compensable work injury, and regardless of whether section 65-05-15 applies to the claim.

5. An injured employee is eligible for an evaluation of permanent impairment only when all conditions caused by the compensable injury have reached maximum medical improvement. The injured employee's doctor shall report to the organization the date an employee has reached maximum medical improvement and any evidence of impairment of function the injured employee has after that date. If the report states that the employee is potentially eligible for a permanent impairment award, the organization shall provide notice to the employee as provided by subsection 3. If the injured employee files a timely written request under subsection 3, the organization shall schedule an impairment evaluation by a doctor qualified to evaluate the impairment.
6. A doctor evaluating permanent impairment shall include a clinical report in sufficient detail to support the percentage ratings assigned. The organization shall adopt administrative rules governing the evaluation of permanent impairment. These rules must incorporate principles and practices of the fifth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" modified to be consistent with North Dakota law, to resolve issues of practice and interpretation, and to address areas not sufficiently covered by the guides. Subject to rules adopted under this subsection, impairments must be evaluated under the fifth edition of the guides.
7. The organization shall deduct, on a whole body impairment basis, from an award for impairment under this section, any previous impairment award for that same member or body part under the ~~workforce safety and insurance~~ workers' compensation laws of any jurisdiction.
8. An injured employee is not entitled to a permanent impairment award due solely to pain.
9. If an employee dies, the right to any compensation payable pursuant to an impairment evaluation previously requested by the employee under subsection 3, which remains unpaid on the date of the employee's death, survives and passes to the employee's dependent spouse, minor children, parents, or estate, in that order. If the employee dies, only those findings of impairment which are objectively verifiable such as values for surgical procedures and amputations may be considered in a rating for impairment. Impairment findings not supported by objectively verifiable evidence may not be included in a rating for impairment. The deceased employee's dependents or representatives shall request an impairment award under this subsection within one year from the date of death of the employee.
10. If the injury causes permanent impairment, the award must be determined based on the percentage of whole body impairment in accordance with the following schedule:

For one to fifteen percent impairment	<del>0 weeks</del> permanent impairment multiplier of 0
For sixteen percent impairment	<del>10 weeks</del> permanent impairment multiplier of 10
For seventeen percent impairment	<del>10 weeks</del> permanent impairment multiplier of 10
For eighteen percent impairment	<del>15 weeks</del> permanent impairment multiplier of 15
For nineteen percent impairment	<del>15 weeks</del> permanent impairment multiplier of 15
For twenty percent impairment	<del>20 weeks</del> permanent impairment multiplier of 20
For twenty-one percent impairment	<del>20 weeks</del> permanent impairment multiplier of 20
For twenty-two percent impairment	<del>25 weeks</del> permanent impairment multiplier of 25
For twenty-three percent impairment	<del>25 weeks</del> permanent impairment multiplier of 25
For twenty-four percent impairment	<del>30 weeks</del> permanent impairment multiplier of 30
For twenty-five percent impairment	<del>30 weeks</del> permanent impairment multiplier of 30
For twenty-six percent impairment	<del>35 weeks</del> permanent impairment multiplier of 35
For twenty-seven percent impairment	<del>35 weeks</del> permanent impairment multiplier of 35
For twenty-eight percent impairment	<del>40 weeks</del> permanent impairment multiplier of 40
For twenty-nine percent impairment	<del>45 weeks</del> permanent impairment multiplier of 45
For thirty percent impairment	<del>50 weeks</del> permanent impairment multiplier of 50
For thirty-one percent impairment	<del>50 weeks</del> permanent impairment multiplier of 50
For thirty-two percent impairment	<del>60 weeks</del> permanent impairment multiplier of 60
For thirty-three percent impairment	<del>70 weeks</del> permanent impairment multiplier of 70
For thirty-four percent impairment	<del>80 weeks</del> permanent impairment multiplier of 80
For thirty-five percent impairment	<del>90 weeks</del> permanent impairment multiplier of 90
For thirty-six percent impairment	<del>100 weeks</del> permanent impairment multiplier of 100
For thirty-seven percent impairment	<del>110 weeks</del> permanent impairment multiplier of 110
For thirty-eight percent impairment	<del>120 weeks</del> permanent impairment multiplier of 120
For thirty-nine percent impairment	<del>130 weeks</del> permanent impairment multiplier of 130
For forty percent impairment	<del>140 weeks</del> permanent impairment multiplier of 140
For forty-one percent impairment	<del>150 weeks</del> permanent impairment multiplier of 150
For forty-two percent impairment	<del>160 weeks</del> permanent impairment multiplier of 160
For forty-three percent impairment	<del>170 weeks</del> permanent impairment multiplier of 170
For forty-four percent impairment	<del>180 weeks</del> permanent impairment multiplier of 180
For forty-five percent impairment	<del>190 weeks</del> permanent impairment multiplier of 190
For forty-six percent impairment	<del>200 weeks</del> permanent impairment multiplier of 200
For forty-seven percent impairment	<del>210 weeks</del> permanent impairment multiplier of 210
For forty-eight percent impairment	<del>220 weeks</del> permanent impairment multiplier of 220
For forty-nine percent impairment	<del>230 weeks</del> permanent impairment multiplier of 230
For fifty percent impairment	<del>240 weeks</del> permanent impairment multiplier of 240
For fifty-one percent impairment	<del>260 weeks</del> permanent impairment multiplier of 260
For fifty-two percent impairment	<del>280 weeks</del> permanent impairment multiplier of 280
	<del>300 weeks</del> permanent impairment multiplier of 300

For fifty-three percent impairment	<del>320 weeks</del> permanent impairment multiplier of 320
For fifty-four percent impairment	<del>340 weeks</del> permanent impairment multiplier of 340
For fifty-five percent impairment	<del>360 weeks</del> permanent impairment multiplier of 360
For fifty-six percent impairment	<del>380 weeks</del> permanent impairment multiplier of 380
For fifty-seven percent impairment	<del>400 weeks</del> permanent impairment multiplier of 400
For fifty-eight percent impairment	<del>420 weeks</del> permanent impairment multiplier of 420
For fifty-nine percent impairment	<del>440 weeks</del> permanent impairment multiplier of 440
For sixty percent impairment	<del>465 weeks</del> permanent impairment multiplier of 465
For sixty-one percent impairment	<del>490 weeks</del> permanent impairment multiplier of 490
For sixty-two percent impairment	<del>515 weeks</del> permanent impairment multiplier of 515
For sixty-three percent impairment	<del>540 weeks</del> permanent impairment multiplier of 540
For sixty-four percent impairment	<del>565 weeks</del> permanent impairment multiplier of 565
For sixty-five percent impairment	<del>590 weeks</del> permanent impairment multiplier of 590
For sixty-six percent impairment	<del>615 weeks</del> permanent impairment multiplier of 615
For sixty-seven percent impairment	<del>640 weeks</del> permanent impairment multiplier of 640
For sixty-eight percent impairment	<del>665 weeks</del> permanent impairment multiplier of 665
For sixty-nine percent impairment	<del>690 weeks</del> permanent impairment multiplier of 690
For seventy percent impairment	<del>715 weeks</del> permanent impairment multiplier of 715
For seventy-one percent impairment	<del>740 weeks</del> permanent impairment multiplier of 740
For seventy-two percent impairment	<del>765 weeks</del> permanent impairment multiplier of 765
For seventy-three percent impairment	<del>790 weeks</del> permanent impairment multiplier of 790
For seventy-four percent impairment	<del>815 weeks</del> permanent impairment multiplier of 815
For seventy-five percent impairment	<del>840 weeks</del> permanent impairment multiplier of 840
For seventy-six percent impairment	<del>865 weeks</del> permanent impairment multiplier of 865
For seventy-seven percent impairment	<del>890 weeks</del> permanent impairment multiplier of 890
For seventy-eight percent impairment	<del>915 weeks</del> permanent impairment multiplier of 915
For seventy-nine percent impairment	<del>940 weeks</del> permanent impairment multiplier of 940
For eighty percent impairment	<del>965 weeks</del> permanent impairment multiplier of 965
For eighty-one percent impairment	<del>990 weeks</del> permanent impairment multiplier of 990
For eighty-two percent impairment	<del>1015 weeks</del> permanent impairment multiplier of 1015
For eighty-three percent impairment	<del>1040 weeks</del> permanent impairment multiplier of 1040
For eighty-four percent impairment	<del>1065 weeks</del> permanent impairment multiplier of 1065
For eighty-five percent impairment	<del>1090 weeks</del> permanent impairment multiplier of 1090
For eighty-six percent impairment	<del>1115 weeks</del> permanent impairment multiplier of 1115
For eighty-seven percent impairment	<del>1140 weeks</del> permanent impairment multiplier of 1140
For eighty-eight percent impairment	<del>1165 weeks</del> permanent impairment multiplier of 1165

For eighty-nine percent impairment	<del>4490 weeks</del> permanent impairment multiplier of 1190
For ninety percent impairment	<del>4215 weeks</del> permanent impairment multiplier of 1215
For ninety-one percent impairment	<del>4240 weeks</del> permanent impairment multiplier of 1240
For ninety-two percent impairment	<del>4265 weeks</del> permanent impairment multiplier of 1265
For ninety-three percent impairment	<del>4290 weeks</del> permanent impairment multiplier of 1290
For ninety-four percent impairment	<del>4320 weeks</del> permanent impairment multiplier of 1320
For ninety-five percent impairment	<del>4350 weeks</del> permanent impairment multiplier of 1350
For ninety-six percent impairment	<del>4380 weeks</del> permanent impairment multiplier of 1380
For ninety-seven percent impairment	<del>4440 weeks</del> permanent impairment multiplier of 1410
For ninety-eight percent impairment	<del>4440 weeks</del> permanent impairment multiplier of 1440
For ninety-nine percent impairment	<del>4470 weeks</del> permanent impairment multiplier of 1470
For one hundred percent impairment	<del>4500 weeks</del> permanent impairment multiplier of 1500

11. An amputation of a finger or toe at the level of the distal interphalangeal joint or proximal to that joint, or the thumb or the great toe at the interphalangeal joint or proximal to that joint, which is determined to result in a whole body impairment of less than sixteen percent and which is not identified in the following schedule, is payable as a sixteen percent impairment. If an evaluation for the loss of an eye or for an amputation results in an award that is less than the ~~number of weeks permanent impairment multiplier~~ identified in the following schedule, the organization shall pay an award equal to the ~~number of weeks permanent impairment multiplier~~ set out in the following schedule:

For amputation of a thumb	<del>65 weeks</del> permanent impairment multiplier of 65
For amputation of the second or distal phalanx of the thumb	<del>28 weeks</del> permanent impairment multiplier of 28
For amputation of the first finger	<del>40 weeks</del> permanent impairment multiplier of 40
For amputation of the middle or second phalanx of the first finger	<del>28 weeks</del> permanent impairment multiplier of 28
For amputation of the third or distal phalanx of the first finger	<del>22 weeks</del> permanent impairment multiplier of 22
For amputation of the second finger	<del>30 weeks</del> permanent impairment multiplier of 30
For amputation of the middle or second phalanx of the second finger	<del>22 weeks</del> permanent impairment multiplier of 22
For amputation of the third or distal phalanx of the second finger	<del>14 weeks</del> permanent impairment multiplier of 14
For amputation of the third finger	<del>20 weeks</del> permanent impairment multiplier of 20
For amputation of the middle or second phalanx of the third finger	<del>16 weeks</del> permanent impairment multiplier of 16
For amputation of the fourth finger	<del>16 weeks</del> permanent impairment multiplier of 16
For amputation of the middle or second phalanx of the fourth finger	<del>12 weeks</del> permanent impairment multiplier of 12
For amputation of the leg at the hip	<del>234 weeks</del> permanent impairment multiplier of 234
For amputation of the leg at or above the knee	<del>405 weeks</del> permanent impairment multiplier of 195
For amputation of the leg at or above the ankle	<del>450 weeks</del> permanent impairment multiplier of 150
For amputation of a great toe	<del>30 weeks</del> permanent impairment multiplier of 30
For amputation of the second or distal phalanx of the great toe	<del>18 weeks</del> permanent impairment multiplier of 18
For amputation of any other toe	<del>12 weeks</del> permanent impairment multiplier of 12
For loss of an eye	<del>450 weeks</del> permanent impairment multiplier of 150

The award for the amputation of more than one finger of one hand may not exceed an award for the amputation of a hand. The award for the amputation of more than one toe of one foot may not exceed an award for the amputation of a foot. If any of the amputations or losses set out in this subsection combine with other impairments for the same work-related injury or condition, the organization shall issue an impairment award based on the greater of the ~~number of weeks~~ permanent impairment multiplier allowed for the combined rating established under the fifth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" or the ~~number of weeks~~ permanent impairment multiplier set forth in this subsection.

12. If there is a medical dispute regarding the percentage of an injured employee's permanent impairment, all relevant medical evidence must be submitted to an independent doctor who has not treated the employee and who has not been consulted by the organization in relation to the injury upon which the impairment is based. The organization shall establish lists of doctors who are qualified by the doctor's training, experience, and area of practice to rate permanent impairments caused by various types of injuries. The organization shall define, by rule, the process by which the organization and the injured employee choose an independent doctor or doctors to review a disputed permanent impairment evaluation or rating. The decision of the independent doctor or doctors chosen under this process is presumptive evidence of the degree of permanent impairment of the employee which can only be rebutted by clear and convincing evidence. This subsection does not impose liability on the organization for an impairment award for a rating of impairment for a body part or condition the organization has not determined to be compensable as a result of the injury. The employee bears the expense of witness fees of the independent doctor or doctors if the employee disputes the findings of the independent doctor or doctors.
13. An attorney's fees are not payable unless there is a bona fide dispute as to the percentage of the employee's permanent impairment or unless there is a dispute as to the employee's eligibility for an award for permanent partial impairment. An attorney's fees payable in connection with a permanent impairment dispute may not exceed twenty percent of the additional amount awarded upon final resolution of the dispute, subject to the maximum fees established pursuant to section 65-02-08.
14. An attorney may not seek or obtain from an employee through a contingent fee arrangement, or on a percentage basis, costs or fees payable in connection with the award or denial of compensation for permanent impairment. A permanent impairment award is exempt from the claims of creditors, including an employee's attorney, except as provided by section 65-05-29.

15. If an injured employee qualifies for an additional award and the prior award was based upon the number of weeks, the impairment multiplier must be used to compare against the prior award of weeks in determining any additional award.

**SECTION 2. APPLICATION.** This Act applies to permanent impairment award determinations made after July 30, 2007.

Approved April 11, 2007

Filed April 13, 2007

**CHAPTER 574****HOUSE BILL NO. 1517**

(Representatives Schneider, Wall)

(Senator Holmberg)

**WSI INFORMATION RELEASE**

AN ACT to amend and reenact section 65-05-32 of the North Dakota Century Code, relating to release of information by workforce safety and insurance; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 65-05-32 of the North Dakota Century Code is amended and reenacted as follows:

**65-05-32. Privacy of records and hearings - Penalty.** Information contained in the claim files and records of injured employees is confidential and is not open to public inspection, other than to organization employees or agents in the performance of their official duties. Providing further that:

1. Representatives of a claimant, whether an individual or an organization, may review a claim file or receive specific information from the file upon the presentation of the signed authorization of the claimant. However, reserve information may not be made available to the claimant or the claimant's representatives. Availability of this information to employers is subject to the sole discretion of the organization.
2. Employers or their duly authorized representatives who are required to have access to an injured ~~worker's~~ employee's claim file for the performance of their duties may review and have access to any files of their own injured ~~workers~~ employees. An employer or an employer's duly authorized representative who willfully communicates information contained in an employee's claim file to any person who does not need the information in the performance of that person's duties is guilty of a class B misdemeanor.
3. Physicians or health care providers treating or examining ~~workers~~ employees claiming benefits under this title, or physicians giving medical advice to the organization regarding any claim may, at the discretion of the organization, inspect the claim files and records of injured ~~workers~~ employees.
4. Other persons may have access to and make inspections of the files, if such persons are rendering assistance to the organization at any stage of the proceedings on any matter pertaining to the administration of this title.
5. The claimant's name; date of birth; injury date; employer name; type of injury; whether the claim is accepted, denied, or pending; and whether the claim is in active or inactive pay status will be available to the public. This information may not be released in aggregate form, except to those persons contracting with the organization for exchange of information

pertaining to the administration of this title or except upon written authorization by the claimant for a specified purpose.

6. At the request of a claimant, the organization may close the medical portion of a hearing to the public.
7. The organization may release the social security number of an individual claiming entitlement to benefits under this title to health care providers or health care facilities for the purpose of adjudicating a claim for benefits.
8. The organization may provide an injured employee's insurer information regarding the injured employee's claim.

Approved March 19, 2007  
Filed March 19, 2007



**CHAPTER 575****SENATE BILL NO. 2294**  
(Senators Nething, Robinson, Triplett)  
(Representatives Amerman, DeKrey, Kasper)**REOPENING WSI CLAIMS PRESUMED CLOSED**

AN ACT to amend and reenact section 65-05-35 of the North Dakota Century Code, relating to reopening of workforce safety and insurance claims that are presumed closed.

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

**SECTION 1. AMENDMENT.** Section 65-05-35 of the North Dakota Century Code is amended and reenacted as follows:

**65-05-35. Closed claim - Presumption.**

1. A claim for benefits under this title is presumed closed if the organization has not paid any benefit or received a demand for payment of any benefit for a period of four years.
2. A claim that is presumed closed may not be reopened for payment of any further benefits unless the presumption is rebutted by clear and convincing evidence that the work injury is the ~~sole~~ primary cause of the current symptoms.
3. With respect to a claim that has been presumed closed, the employee shall provide the organization written notice of reapplication for benefits under that claim. In case of award of lost-time benefits, the award may commence no more than thirty days before the date of reapplication. In case of award of medical benefits, the award may be for medical services incurred no more than thirty days before the date of reapplication.
4. This section applies to all claims for injury, irrespective of injury date.

Approved March 13, 2007  
Filed March 14, 2007

# VETOED MEASURES

## CHAPTER 576

### HOUSE BILL NO. 1012

(Appropriations Committee)  
(At the request of the Governor)

#### DEPARTMENT OF TRANSPORTATION

AN ACT to provide an appropriation for defraying the expenses of the department of transportation; to provide for legislative council studies; to provide for transfers; to provide a contingent continuation of the single state registration system; to create and enact a new section to chapter 8-11.1 and a new section to chapter 24-02 of the North Dakota Century Code, relating to midwest interstate passenger rail commission dues and authority of the director of the department of transportation to join the multistate highway transportation agreement; to amend and reenact sections 39-04.2-04 and 39-29-10, the new subsection to section 57-40.3-04 of the North Dakota Century Code as created by section 4 of House Bill No. 1393, as approved by the sixtieth legislative assembly, and section 57-40.3-10 of the North Dakota Century Code, relating to distribution of public transportation funds, the operation of off-highway vehicles, motor vehicle excise tax exemptions for tribal members, and motor vehicle excise tax collections; to provide an expiration date; and to declare an emergency.

VETO

May 9, 2007

The Honorable Jeff Delzer  
Speaker.  
North Dakota House of Representatives  
State Capitol  
Bismarck, North Dakota 58505

Item Veto of Section 12 in HB 1012

Dear Speaker Delzer:

I signed House Bill 1012, the appropriation bill for the Department of Transportation, but veto Section 12 of the bill.

Section 12 of HB 1012 would extend the rights entitled to a member of a federally recognized tribe living on a reservation in North Dakota to any tribal member in the country, regardless of the individual's domicile.

While the motor vehicle excise tax applies to all North Dakotans, the state's taxation authority has limits in transactions involving a federally enrolled tribal member. The limit largely depends on geography. This unique exception to tax individuals differently is based primarily on geographic differences and not only tribal affiliation.

According to the United States Supreme Court, tribal tax immunity jurisprudence and the doctrine of tribal sovereignty have a significant geographical component. E.g. Wagnon v. Prairie Band Potawatomi Nation, 126 S. Ct. 676 (2005). As the Court pointed out, Native Americans going beyond reservation boundaries have generally been held subject to nondiscriminatory taxation under state law otherwise applicable to all citizens of the State. E.g. id.

Section 12 of HB 1012 would remove any geographical component to tribal tax jurisprudence and extend a narrowly tailored right that applied exclusively to tribal members transacting business on a reservation to any transactions outside the reservation boundaries. The effect of this extension could cause similarly situated neighbors to be treated differently based solely on their race.

Section 12 of HB 1012 would create inequity and open an exception that would be overly broad and exempt certain individuals from a law that is otherwise blind to a person's nationality. North Dakota's tax laws should respect tribal sovereignty but be applied equitably and without regard to race when tribal immunity based on geography is not involved.

For these reasons, I disapprove and veto Section 12 of HB 1012.

Sincerely,

John Hoeven  
Governor

Disapproved May 9, 2007  
Filed May 9, 2007

NOTE: For the full text of House Bill No. 1012, including section 12, see chapter 12.

**CHAPTER 577****SENATE BILL NO. 2047**

(Government and Veterans Affairs Committee)

(At the request of the Public Employees Retirement System Board)

**DEFERRED COMPENSATION AUTOMATIC  
ENROLLMENT**

AN ACT to amend and reenact sections 54-52.2-01, 54-52.2-02, and 54-52.2-05 of the North Dakota Century Code, relating to automatic enrollment of employees in the deferred compensation program under the public employees retirement system.

VETO

May 9, 2007

The Honorable Jack Dalrymple  
President of the Senate  
Senate Chambers  
State Capitol  
Bismarck, North Dakota 58505

RE: SB 2047

Dear President Dalrymple:

I hereby veto Senate Bill 2047 and return it unsigned.

Senate Bill 2047 provides that new state employees would be automatically enrolled in a self-directed 457 Plan, the public sector equivalent of a 401(k) Plan. Under provisions of the bill, the employee would have 30 days from the beginning of employment to fill out a prescribed form "opting out" of the plan.

Although I approve of measures to encourage employees to save for retirement, I have concerns regarding this bill. The bill authorizes the State to withhold a portion of a new employee's salary without his or her prior consent to do so. It requires the action of the new employee to prevent the involuntary withholding of a portion of their salary. A new employee should be treated the same as an existing employee in determining how he or she wants to plan for retirement.

The State offers retirement plans to help its employees save for their retirement, but it should not withhold their salary without their consent and subject them to a penalty if they request out of the plan after they have been automatically enrolled. Individuals should be free to determine in the first instance how best to establish their savings.

Because SB 2047 withholds employees' compensation without their active consent and treats new employees different than existing employees, I have vetoed the legislation.

Sincerely,

John Hoeven  
Governor

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

**SECTION 1. AMENDMENT.** Section 54-52.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.2-01. Deferred compensation program for public employees - Contract.** Except for an employee employed by an institution under the control of the state board of higher education or the North Dakota university system board office who is eligible for membership in the teachers' insurance and annuity association of America-college retirement equities fund (TIAA-CREF), a participating employer shall automatically enroll employees first employed with the state on or after August 1, 2007, in the deferred compensation program, effective the first day of the month following the employee's first full month of employment with the state, unless the employee executes and files with the public employees retirement system board a prescribed form for opting out of the automatic enrollment within thirty days of beginning employment. The state shall withhold twenty-five dollars per month from the compensation of each employee subject to the automatic enrollment provided for in this section, and the state shall forward those moneys to the board for deposit into an investment option selected by the board for each employee. The state or any county, city, or other political subdivision may, by contract, otherwise 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 public employees retirement board shall specify methods of payment of deferred compensation funds to be selected by individual employees. That board shall determine the number of employees participating in a deferred compensation program necessary to qualify for automatic payroll deduction.

**SECTION 2. AMENDMENT.** Section 54-52.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.2-02. Deferred employee's compensation - Agreements.** The public employees retirement board, acting on behalf of each state agency, department, board, commission, or institution, may enter into contractual agreements with employees of a state agency, department, board, commission, or institution, including employees who were automatically enrolled in the deferred compensation program pursuant to section 54-52.2-01, on behalf of the state to defer any portion of that employee's compensation allowed under section 457 of the Internal Revenue Code [26 U.S.C. 457].

**SECTION 3. AMENDMENT.** Section 54-52.2-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.2-05. Administrators authorized to make payments or investments.** Notwithstanding any other provision of law to the contrary, those persons designated to administer the deferred compensation program ~~are hereby authorized to~~ may make payments or investments under the deferred compensation program ~~as specified by the employee~~ in accordance with section 54-52.2-01. The payments or investments may not be construed to be a prohibited use of the general assets of the state, county, city, or other political subdivision.

Disapproved April 26, 2007

Filed April 26, 2007

# INITIATED MEASURE APPROVED

## CHAPTER 578

### TAKING OF PRIVATE PROPERTY FOR PUBLIC USE

An initiated measure for the amendment of section 16 of article I of the Constitution of North Dakota, relating to the taking of private property for public use, by defining public use or purpose as not including public economic development benefits, and providing that private property could not be taken for private benefit unless necessary for conducting a common carrier or utility business.

#### BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 16 of article I of the North Dakota Constitution is amended and reenacted as follows:

**Section 16.** Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court for the owner, unless the owner chooses to accept annual payments as may be provided for by law. No right of way shall be appropriated to the use of any corporation until full compensation therefor be first made in money or ascertained and paid into court for the owner, unless the owner chooses annual payments as may be provided by law, irrespective of any benefit from any improvement proposed by such corporation. Compensation shall be ascertained by a jury, unless a jury be waived. When the state or any of its departments, agencies or political subdivisions seeks to acquire right of way, it may take possession upon making an offer to purchase and by depositing the amount of such offer with the clerk of the district court of the county wherein the right of way is located. The clerk shall immediately notify the owner of such deposit. The owner may thereupon appeal to the court in the manner provided by law, and may have a jury trial, unless a jury be waived, to determine the damages, which damages the owner may choose to accept in annual payments as may be provided for by law. Annual payments shall not be subject to escalator clauses but may be supplemented by interest earned.

For purposes of this section, a public use or a public purpose does not include public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health. Private property shall not be taken for the use of, or ownership by, any private individual or entity, unless that property is necessary for conducting a common carrier or utility business.

Approved November 7, 2006

137,660 to 66,302

NOTE: This was measure No. 2 on the general election ballot.

# INITIATED MEASURE DISAPPROVED

## CHAPTER 579

### CHILD SUPPORT AND CUSTODY

An initiated measure to create and enact section 14-09-06.7 of the North Dakota Century Code, relating to child custody and support and would provide that in the event of a divorce or separation, each parent would be entitled to joint legal and physical custody unless first declared unfit based on clear and convincing evidence. Parents would develop a joint parenting plan, with a court becoming involved only if the parents could not agree on a plan. Child support payments would be determined base on the parenting plan and could not be greater than the actual cost of providing for the basic needs of each child.

#### **BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:**

**SECTION 1.** Section 14-09-06.7 of the North Dakota Century Code is created and enacted as follows:

#### **14-09-06.7. Shared Parenting - equal access to children.**

Notwithstanding any other state statute or common law, the following fundamental rights are hereby recognized for all adults and children of North Dakota, and this section shall be self activating upon voter approval.

1. Parents have a fundamental liberty interest in the care, custody and control of their children. Acknowledging the long established legal tenet that fit parents act in the best interest of their children, no parent shall be denied custody of a child without first having been declared unfit, utilizing the clear and convincing evidentiary standard. Absent a finding of parental unfitness parents retain joint legal and joint physical custody of their children. Joint physical custody of the children is defined as a rebuttable presumption of equal time sharing by the parents. In the event of a finding of unfitness of one parent, the best interests and welfare of the child is determined at the court's discretion utilizing current best interest standards as defined in existing state code.

2. Parents shall develop a joint parenting plan, or if they can not agree to such a plan, the court shall facilitate production of a parenting plan with them. These plans must take into account the fundamental liberty interest of the parents, encouraging parents to craft a plan based on their unique family circumstances. Parents may modify the parenting plan anytime without restriction by mutual agreement. Parenting plan changes as a result of court petition require the petitioner to demonstrate how the modification serves the child's best interest. Parents who have not previously had a fitness hearing my petition the court for a fitness hearing at any time. All decisions or actions under state law shall be gender and race neutral. Gender cannot be a determining factor in parenting plan formulation or modification decisions.



3. Child support payments and allocation of child support obligations will be determined according to the parenting plan, and will not be greater than the actual cost of providing for the basic needs of the child(ren).

Disapproved November 7, 2006      91,225 to 118,048

NOTE: This was measure No. 3 on the general election ballot.

# CONSTITUTIONAL AMENDMENTS APPROVED

## CHAPTER 580

### SENATE CONCURRENT RESOLUTION NO. 4012

(Senators Mathern, Triplett)  
(Representative DeKrey)

#### STATE MILITIA

A concurrent resolution for the amendment of section 16 of article XI of the Constitution of North Dakota, relating to the definition of this state's militia; and to provide an effective date.

#### STATEMENT OF INTENT

This measure defines reserve and active militia and removes obsolete language in regard to age and gender in the reserve militia and removes residency requirements for membership in the active militia that is defined as the National Guard of North Dakota.

#### BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to section 16 of article XI of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 2006, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1. AMENDMENT.** Section 16 of article XI of the Constitution of North Dakota is amended and reenacted as follows:

**Section 16.** The reserve militia of this state shall consist consists of all able-bodied ~~male persons~~ individuals eighteen years of age and older residing in the state, ~~between the ages of eighteen and forty-five years, except such as may be~~ unless exempted by the laws of the United States or of this state. ~~Persons~~ The active militia is the national guard of this state and consists of individuals who volunteer and are accepted unless exempted by the laws of the United States or of this state. An individual whose religious tenets or conscientious scruples forbid them that individual to bear arms shall may not be compelled to do so in times of peace, but that individual shall pay an equivalent for a personal service.

**SECTION 2. EFFECTIVE DATE.** If approved by the voters, this measure becomes effective on August 1, 2006.

Approved June 13, 2006 72,581 to 26,353

NOTE: This was measure No. 1 on the 2006 primary election ballot.

**CHAPTER 581****HOUSE CONCURRENT RESOLUTION NO. 3055**

(Representatives N. Johnson, Ekstrom, Keiser)

(Senators Klein, Krebsbach, Triplett)

**CORPORATION VOTING AND REGULATION**

A concurrent resolution for the amendment of sections 1, 2, and 6 of article XII of the Constitution of North Dakota, relating to regulation of corporations and to cumulative voting by corporate members or shareholders; to repeal sections 3, 4, 7, 8, 9, 11, 12, 13, 14, 15, and 17 of article XII of the Constitution of North Dakota, relating to regulation of business corporations; and to provide an effective date.

**STATEMENT OF INTENT**

This measure removes outdated or unnecessary provisions in the Constitution of North Dakota relating to business corporations and authorizes the legislative assembly to provide by law for regulation of corporations. This measure would take effect on July 1, 2006.

**BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the following proposed amendments to sections 1, 2, and 6 of article XII of the Constitution of North Dakota and the proposed repeal of sections 3, 4, 7, 8, 9, 11, 12, 13, 14, 15, and 17 of article XII of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 2006, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1. AMENDMENT.** Section 1 of article XII of the Constitution of North Dakota is amended and reenacted as follows:

**Section 1.** The term "corporation", as used in this article, ~~shall not be understood as embracing~~ does not embrace municipalities or political ~~divisions~~ subdivisions of the state unless otherwise expressly stated; ~~but it shall be held and construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships.~~

**SECTION 2. AMENDMENT.** Section 2 of article XII of the Constitution of North Dakota is amended and reenacted as follows:

**Section 2.** ~~No charter of incorporation shall be granted, changed or amended by special law, except in the case of such municipal, charitable, educational, penal or reformatory corporations as may be under the control of the state; but the~~ All corporations existing or hereafter chartered hold the charter subject to the provisions of this constitution. The legislative assembly shall may provide by general laws for the organization and regulation of all corporations ~~hereafter to be created, and any such law, so passed enacted, shall be~~ is subject to future repeal or ~~alteration~~ amendment.

**SECTION 3. AMENDMENT.** Section 6 of article XII of the Constitution of North Dakota is amended and reenacted as follows:

**Section 6.** ~~¶ Unless otherwise provided in the articles of incorporation, in all elections for directors or managers of a corporation, each member or shareholder may cast the whole number of his the member's or shareholder's votes for one candidate, or distribute them upon two or more candidates, as he the member or shareholder may prefer, provided, any cooperative corporation may adopt bylaws limiting the voting power of its stockholders.~~

**SECTION 4. REPEAL.** Sections 3, 4, 7, 8, 9, 11, 12, 13, 14, 15, and 17 of article XII of the Constitution of North Dakota are repealed.

**SECTION 5. EFFECTIVE DATE.** If approved by the voters, this measure becomes effective on July 1, 2006.

Approved June 13, 2006      70,617 to 26,005

NOTE: This was measure No. 2 on the 2006 primary election ballot.

**CHAPTER 582****HOUSE CONCURRENT RESOLUTION NO. 3037**

(Representatives R. Kelsch, Boucher, Kasper)

(Senators Grindberg, O'Connell)

**COMMON SCHOOLS TRUST FUND**

A concurrent resolution for the amendment of sections 1 and 2 of article IX of the Constitution of North Dakota, relating to distributions from and management of the common schools trust fund and the trust funds of other educational or charitable institutions; and to provide a contingent effective date.

**STATEMENT OF INTENT**

This measure requires that the permanent trust funds be managed to preserve their purchasing power, to provide stable distributions to fund beneficiaries, and to benefit fund beneficiaries. The measure changes trust fund distributions from interest and income earned by a fund to distributions based on a fund's average value, requires that all revenue produced by a trust fund be deposited in the fund, and provides for paying the costs of administration.

**BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the following proposed amendments to sections 1 and 2 of article IX of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 2006, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1. AMENDMENT.** Section 1 of article IX of the Constitution of North Dakota is amended and reenacted as follows:

**Section 1.** All proceeds of the public lands that have ~~heretofore~~ been, or may ~~hereafter~~ be granted by the United States for the support of the common schools in this state; all such per centum as may be granted by the United States on the sale of public lands; the proceeds of property that ~~shall~~ fall to the state by escheat; all gifts, donations, or the proceeds thereof that come to the state for support of the common schools, or not otherwise appropriated by the terms of the gift, and all other property otherwise acquired for common schools, ~~shall~~ must be and remain a perpetual trust fund for the maintenance of the common schools of the state. ~~Only the interest and income of the fund may be expended and the principal shall be retained and devoted to the trust purpose.~~ All property, real or personal, received by the state from whatever source, for any specific educational or charitable institution, unless otherwise designated by the donor, ~~shall~~ must be and remain a perpetual trust fund for the creation and maintenance of such institution, and may be commingled only with similar funds for the same institution. ~~Should~~ If a gift ~~be~~ is made to an institution for a specific purpose, without designating a trustee, ~~such~~ the gift may be placed in the institution's fund; provided that such a donation may be expended as the terms of the gift provide. Revenues earned by a perpetual trust fund must be deposited in the fund. The costs of administering a perpetual trust fund may be paid out of the fund. The perpetual trust funds must be managed to preserve their purchasing power and to maintain stable distributions to fund beneficiaries.

~~The interest and income of each institutional trust fund held by the state shall, unless otherwise specified by the donor, be appropriated by the legislative assembly to the exclusive use of the institution for which the funds were given.~~

~~The proceeds of all bonuses, or similar payments, made upon the leasing of coal, gas, oil, or any other mineral interests under, or reserved after sale of, grant lands for the common schools or institutional lands shall be deposited in the appropriate permanent trust fund as created by this section.~~

**SECTION 2. AMENDMENT.** Section 2 of article IX of the Constitution of North Dakota is amended and reenacted as follows:

Section 2. The interest and income of this fund ~~Distributions from the common schools trust fund,~~ together with the net proceeds of all fines for violation of state laws and all other sums which may be added ~~thereto~~ by law, shall must be faithfully used and applied each year for the benefit of the common schools of the state and no part of the fund ~~shall must~~ ever be diverted, even temporarily, from this purpose or used for any ~~other purpose whatever~~ other than the maintenance of common schools as provided by law. Distributions from an educational or charitable institution's trust fund must be faithfully used and applied each year for the benefit of the institution and no part of the fund may ever be diverted, even temporarily, from this purpose or used for any purpose other than the maintenance of the institution, as provided by law.

For the biennium during which this amendment takes effect, distributions from the perpetual trust funds must be the greater of the amount distributed in the preceding biennium or ten percent of the five-year average value of trust assets, excluding the value of lands and minerals. Thereafter, biennial distributions from the perpetual trust funds must be ten percent of the five-year average value of trust assets, excluding the value of lands and minerals. The average value of trust assets is determined by using the assets' ending value for the fiscal year that ends one year before the beginning of the biennium and the assets' ending value for the four preceding fiscal years. Equal amounts must be distributed during each year of the biennium.

**SECTION 3. CONTINGENT EFFECTIVE DATE.** If approved by the voters, this measure becomes effective on the July first following the date on which the attorney general certifies to the secretary of state that the United States Congress has by amendment removed all inconsistent provisions found in the 1889 Enabling Act [Act of Feb. 22, 1889, ch. 180, 25 Stat. 676] and the 1862 Morrill Act [Act of July 2, 1862, ch. 130, 12 Stat. 503; 7 U.S.C. §§ 301- 308].

Approved November 7, 2006 128,800 to 62,772

NOTE: This was measure No. 1 on the 2006 general election ballot.

# CONSTITUTIONAL AMENDMENTS PROPOSED

## CHAPTER 583

### HOUSE CONCURRENT RESOLUTION NO. 3016

(Representatives DeKrey, Berg, Boucher)  
(Senators Nething, O'Connell, Stenehjem)

### LEGISLATIVE MEMBER APPOINTMENT TO A STATE OFFICE

A concurrent resolution for the amendment of section 6 of article IV of the Constitution of North Dakota, relating to the appointment of a member of the legislative assembly to a full-time appointive state office.

#### STATEMENT OF INTENT

This measure removes the prohibition on appointing a member of the legislative assembly to an office for which the compensation has been increased by the legislative assembly during that member's term of office.

#### BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed amendment to section 6 of article IV of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 2008, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1. AMENDMENT.** Section 6 of article IV of the Constitution of North Dakota is amended and reenacted as follows:

**Section 6.** 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 that~~ has been created, ~~or to any office for which the compensation has been increased,~~ by the legislative assembly during that term.

Filed April 5, 2007

NOTE: This will be measure No. 1 on the 2008 primary election ballot.

**CHAPTER 584****HOUSE CONCURRENT RESOLUTION NO. 3045**

(Representatives Weiler, Boehning, Kasper, Skarphol, Thoreson)  
(Senator Stenehjem)

**PERMANENT OIL TAX TRUST FUND**

A concurrent resolution to create and enact a new section to article X of the Constitution of North Dakota, relating to establishment and use of a permanent oil tax trust fund; and to provide an effective date.

**STATEMENT OF INTENT**

This measure establishes a permanent oil tax trust fund and imposes limitations on use of moneys in the fund.

**BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the following proposed new section to article X of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 2008, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1.** A new section to article X of the Constitution of North Dakota is created and enacted as follows:

All revenue deposited in the general fund during a biennium derived from taxes imposed on oil and gas at the time of production or extraction which exceeds one hundred million dollars must be transferred by the state treasurer to a special fund in the state treasury known as the permanent oil tax trust fund. Beginning in 2011, at the beginning of each biennium immediately following a biennium in which revenue from taxes imposed on oil and gas was deposited in the permanent oil tax trust fund, the state treasurer shall adjust the dollar threshold amount as determined under this section for transfers to the permanent oil tax trust fund by applying to that amount the rate of change since the beginning of the previous biennium in the consumer price index for all urban consumers, all items, United States city average, or any successor index, as calculated by the United States department of labor, bureau of labor statistics. The state treasurer shall transfer interest earnings of the permanent oil tax trust fund to the general fund at the end of each fiscal year. The principal of the permanent oil tax trust fund may not be expended except upon a vote of three-fourths of the members elected to each house of the legislative assembly and not more than twenty percent of the principal may be expended during any biennium.

**SECTION 2. EFFECTIVE DATE.** If approved by the voters, this measure becomes effective on July 1, 2009.

Filed April 4, 2007

NOTE: This will be measure No. 1 on the 2008 general election ballot.



# HOUSE CONCURRENT RESOLUTIONS

## CHAPTER 585

### HOUSE CONCURRENT RESOLUTION NO. 3001

(Legislative Council)  
(Budget Section)

#### BLOCK GRANT HEARINGS

A concurrent resolution 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 passed by Congress.

**WHEREAS**, the Congress of the United States enacted the Omnibus Budget Reconciliation Act of 1981 creating the community services block grant program; and

**WHEREAS**, the Legislative Assembly is required to conduct public hearings; and

**WHEREAS**, the Appropriations Committees have met the public hearing requirement for community services block grant moneys expected for the next biennium by the Department of Commerce; and

**WHEREAS**, the Sixtieth Legislative Assembly cannot hold public hearings on revisions to current block grants or additional block grants that may be approved by Congress after the recess or adjournment of the Legislative Assembly; and

**WHEREAS**, the Legislative Assembly will not meet in regular session during 2008 and thus its public hearing responsibility for grants not approved by the Sixtieth Legislative Assembly must be delegated to a legislative entity;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Department of Commerce appropriation bill enacted by the Legislative Assembly is the Legislative Assembly's approval of and contains directions regarding the use of community services block grant moneys for the period ending September 30, 2009; and

**BE IT FURTHER RESOLVED**, that the Budget Section of the Legislative Council may hold the public legislative hearings required for the receipt of additional block grants or other federal moneys under the Omnibus Budget Reconciliation Act of 1981 or other relevant federal statutes; and

**BE IT FURTHER RESOLVED**, that the authority granted by this resolution is in effect during the period from the recess or adjournment of the Sixtieth Legislative Assembly through September 30, 2009, and the Budget Section may provide public notice and hold the hearings authorized by this resolution using the methods and procedures it deems appropriate.

Filed March 5, 2007

**CHAPTER 586****HOUSE CONCURRENT RESOLUTION NO. 3002**

(Legislative Council)  
(Judicial Process Committee)

**JUDICIAL ELECTION AND SELECTION STUDY**

A concurrent resolution directing the Legislative Council to study the judicial election and judicial selection process in North Dakota.

**WHEREAS**, district judges and Supreme Court justices in North Dakota are elected on a no-party ballot; and

**WHEREAS**, several federal cases have been decided recently which could have a dramatic impact on judicial selection methods in North Dakota and throughout the country; and

**WHEREAS**, the 2005-06 interim Judicial Process Committee in cooperation with a State Bar Association of North Dakota task force studied the judicial election and selection process in North Dakota; and

**WHEREAS**, the 2005-06 interim Judicial Process Committee and the State Bar Association of North Dakota task force recommended that no immediate legislative changes are necessary as a result of the recent federal cases involving judicial election and selection; and

**WHEREAS**, the methodology of judicial selection in North Dakota is a complex issue that requires additional study; and

**WHEREAS**, the 2005-06 interim Judicial Process Committee recommended that the study of the judicial election and selection process continue into the 2007-08 interim;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the judicial election and judicial selection process in North Dakota; and

**BE IT FURTHER RESOLVED**, that the Legislative Council pursue a public information and education program with the State Bar Association of North Dakota which includes public forums around the state regarding judicial selection methodology and the conduct of judicial elections; 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 Sixty-first Legislative Assembly.

Filed March 21, 2007

**CHAPTER 587****HOUSE CONCURRENT RESOLUTION NO. 3003**

(Representatives Hanson, Kroeber)  
(Senator Nething)

**ARMENIAN GENOCIDE REMEMBERED**

A concurrent resolution proclaiming April 24 as a day of remembrance of the Armenian genocide.

**WHEREAS**, 1,500,000 men, women, and children of Armenian descent were victims of the genocide perpetrated by the Ottoman Empire in 1915 and thereafter; and

**WHEREAS**, the United States Ambassador to the Ottoman Empire, Henry Morgenthau, Sr., stated, "Whatever crimes the most perverted instincts of the human mind can devise, and whatever refinement of persecutions and injustice the most debased imagination can conceive, became the daily misfortunes of these 'devoted people.'"; and

**WHEREAS**, the killing of the Armenian people was accomplished by the systematic destruction of churches, schools, libraries, treasures of art, and cultural monuments in an attempt to eliminate all traces of a noble civilization with a history of more than 3,000 years; and

**WHEREAS**, the Armenian genocide has been acknowledged by several countries and international bodies; and

**WHEREAS**, each year Armenians throughout the world honor those who perished from 1915 to 1923, and all the world's people should commemorate the Armenian genocide because it stands as an ugly testament to man's inhumanity to man; and

**WHEREAS**, it is essential to raise awareness about the Armenian genocide not only because it is an undeniable chapter of world history, but also because learning more about this unconscionable tragedy will help better understand the necessity of eliminating hatred from our own communities;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That April 24 is proclaimed as a day of remembrance of the Armenian genocide; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the chairman of the Armenian Community of North Dakota, the Armenian Assembly of America, the Armenian National Committee, each member of the North Dakota Congressional Delegation, and the President of the United States.

Filed April 5, 2007

**CHAPTER 588****HOUSE CONCURRENT RESOLUTION NO. 3005**

(Representatives Froelich, Brandenburg, Kerzman, Kretschmar)  
(Senators Erbele, Krauter)

**AGRICULTURAL DISASTER RELIEF URGED**

A concurrent resolution urging Congress to pass an agricultural disaster relief package.

**WHEREAS**, weather-related disasters devastated United States agriculture in 2005 and 2006; and

**WHEREAS**, during 2005, over 1,000,000 acres could not be planted because of weather-related disasters, hundreds of thousands of acres that were planted were lost because of excessive rainfall, 78 percent of all counties were declared by the United States Department of Agriculture to be primary or contiguous disaster areas, and there has been no disaster assistance for those who lost all or a large part of their 2005 farm income; and

**WHEREAS**, 2006 was declared by United States Department of Agriculture meteorologists to be one of the worst droughts in the nation's history, preceded only by the dust bowl of the 1930s and the prolonged drought of the 1950s; and

**WHEREAS**, during 2006, 71 percent of all counties were declared by the United States Department of Agriculture to be primary or contiguous disaster areas and south central North Dakota was at the epicenter of this devastation; and

**WHEREAS**, the United States Department of Agriculture drought data suggests that 2006 disaster assistance needs will be in the \$3 billion to \$4 billion range; and

**WHEREAS**, the economic pain that results from weather-related disasters does not end at the farm gate but permeates every storefront of every main street in every community in rural areas affected by weather-related disasters and must be addressed through the immediate passage of an agricultural disaster relief package; and

**WHEREAS**, the very practical and immediate needs of agricultural producers and rural communities should not be ignored and must be addressed before irreparable economic harm comes to tens of thousands of agricultural producers, their families, and main street businesses;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly urges the Congress of the United States to recognize that the weather-related disasters of 2005 and 2006 have caused economic devastation on the farms, the ranches, and the main streets of rural America and to take all steps necessary and proper to pass an agricultural disaster relief package that will provide prompt economic assistance to agricultural

producers and to those whose livelihoods are dependent on the well-being of the agricultural sector; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of the United States, the Secretary of the United States Department of Agriculture, the members of the Senate Agriculture, Nutrition, and Forestry Committee, the members of the House Committee on Agriculture, and to each member of the North Dakota Congressional Delegation.

Filed March 2, 2007

**CHAPTER 589****HOUSE CONCURRENT RESOLUTION NO. 3007**

(Representatives Froelich, Kempenich, Kerzman, S. Meyer)

**BEEF CHECKOFF REFERENDUM URGED**

A concurrent resolution urging Congress to require a nationwide referendum of beef producers before allowing an increase in the beef checkoff rate.

**WHEREAS**, the beef checkoff program, which was established as part of the Food Security Act of 1985, assesses \$1 per head on the sale of live domestic and imported cattle, in addition to a comparable assessment on imported beef and beef products; and

**WHEREAS**, the assessment became mandatory when the program was approved by 79 percent of producers in a 1988 national referendum; and

**WHEREAS**, the beef checkoff program is designed to build demand for beef and veal in both domestic and foreign markets through research, promotion, and the dissemination of both consumer and industry information; and

**WHEREAS**, a recent review of the beef checkoff program by an industrywide task force resulted in a recommendation that the continuation of strong demand-building initiatives requires an increase in the checkoff rate to \$2, an opportunity to petition for a referendum, and making the checkoff more inclusive;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly urges the Congress of the United States to ensure that if the Beef Promotion and Research Act of 1985 is amended, thereby permitting an increase in the beef checkoff rate, the increase be predicated upon a successful nationwide referendum of beef producers; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Secretary of the United States Department of Agriculture and to each member of the North Dakota Congressional Delegation.

Filed March 20, 2007

**CHAPTER 590****HOUSE CONCURRENT RESOLUTION NO. 3008**

(Representatives Klemin, DeKrey, Delmore)  
(Senators Fischer, J. Lee, Nething)

**CHILD CUSTODY AND VISITATION STUDY**

A concurrent resolution directing the Legislative Council to study the issues of fairness, equity, and the best interests of children as they relate to issues of child custody and visitation.

**WHEREAS**, more than one-half of all actions filed in district court involve issues related to family law, including divorce, custody, and visitation; and

**WHEREAS**, every child who is the subject of a custody or visitation issue has the right to a determination that fosters the best interests of the child, including the child's right to a secure environment and to the guidance, nurture, and emotional, physical, and financial support of both parents; and

**WHEREAS**, North Dakota law provides that for the purposes of determining custody and visitation, there is no presumption as to which parent will better promote the best interests of the child; and

**WHEREAS**, concerns have been expressed regarding child custody orders and the enforcement of visitation orders;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the issues of fairness, equity, and the best interests of children as they relate to issues of child custody and visitation; 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 Sixty-first Legislative Assembly.

Filed March 21, 2007



**CHAPTER 591****HOUSE CONCURRENT RESOLUTION NO. 3010**

(Representatives Froelich, Brandenburg, Kempenich, Kerzman)  
(Senators Bowman, Taylor)

**MEAT COUNTRY OF ORIGIN LABELING URGED**

A concurrent resolution urging Congress to implement country of origin labeling for all meat and poultry products.

**WHEREAS**, the 2002 Farm Security and Rural Investment Act mandated country of origin labeling at the retail level for seafood, beef, veal, pork, lamb, fresh and frozen fruits and vegetables, and peanuts; and

**WHEREAS**, Congress delayed implementation of significant portions of the law until 2008, largely as a result of efforts by the meat packing industry, processors, and retailers; and

**WHEREAS**, American meat often is sold in grocery stores and restaurants with no distinguishing labels or origin information; and

**WHEREAS**, American consumers consistently have supported country of origin labeling for meat originating in the United States; and

**WHEREAS**, country of origin labeling would allow informed consumers to exercise their preferences for American meat and would allow producers to identify proudly the result of their efforts as products of the United States; and

**WHEREAS**, country of origin labeling would preserve confidence in our food system by increasing the ability of consumers to identify the source of their foods and to make selections based on that identification;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly urges the Congress of the United States to first ensure that proposed rules governing implementation of country of origin labeling adequately address cattle industry concerns and then implement mandatory country of origin labeling for all meat and poultry products; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Secretary of the United States Department of Agriculture, the members of the Senate Agriculture, Nutrition and Forestry Committee, the members of the House Committee on Agriculture, and to each member of the North Dakota Congressional Delegation.

Filed April 16, 2007

**CHAPTER 592****HOUSE CONCURRENT RESOLUTION NO. 3012**

(Representatives Owens, Dietrich, Grande)  
(Senator Bakke)

**EDUCATION COST STUDY**

A concurrent resolution directing the Legislative Council to study the determination of the cost of elementary and secondary education.

**WHEREAS**, the Superintendent of Public Instruction is statutorily charged with determining the cost of elementary and secondary education; and

**WHEREAS**, in determining the cost of elementary and secondary education, state law provides that the Superintendent of Public Instruction is to consider all costs except capital outlays for buildings, sites, and debt service and expenditures for school activities, lunch programs, and transportation; and

**WHEREAS**, the school districts of this state vary considerably with respect to their size, with respect to the educational opportunities that they make available to their students, and with respect to their efficiencies; and

**WHEREAS**, the equitable distribution of state funds to school districts for elementary and secondary education requires a common understanding of what constitutes the cost of that education;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the determination of the cost of elementary and secondary education, and the determination of the cost of delivering only that education required by state law, assuming a student-teacher ratio of 20 to 1 and excluding all extracurricular activities; 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 Sixty-first Legislative Assembly.

Filed March 21, 2007

**CHAPTER 593****HOUSE CONCURRENT RESOLUTION NO. 3013**

(Representatives DeKrey, Dahl, Delmore)

(Senators Fiebiger, Hacker, Nelson)

**DOMESTIC VIOLENCE PROTECTION ORDER STUDY**

A concurrent resolution directing the Legislative Council to study statutes and institutional resources relating to the domestic violence protection order process, including criminal cases for alleged violation of protection orders.

**WHEREAS**, a recent study conducted by a Supreme Court advisory group revealed significant questions about whether current statutes governing the domestic violence protection order process adequately fulfill their intended purpose; and

**WHEREAS**, there are concerns that imbalances exist in institutional and other resources available to parties to the protection order process to the extent that an equitable resolution of issues may be compromised; and

**WHEREAS**, the manner in which services are provided to parties to a domestic violence protection order proceeding has not been the subject of recent study to determine whether current statutes are adequately implemented; and

**WHEREAS**, issues concerning the civil protection order process also extend to statutes and processes governing criminal cases for alleged violation of protection orders;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study statutes and institutional resources relating to the domestic violence protection order process, including criminal cases for alleged violation of protection orders; 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 Sixty-first Legislative Assembly.

Filed March 21, 2007

**CHAPTER 594****HOUSE CONCURRENT RESOLUTION NO. 3014**

(Representatives Weiler, Berg, Boucher)  
(Senators O'Connell, Stenehjem)

**NORTH DAKOTA CLOSE UP DAY**

A concurrent resolution declaring Monday, February 12, 2007, "North Dakota Close Up Day".

**WHEREAS**, the North Dakota Close Up program is designed to ignite interest in the democratic process and instill in young people the desire to become active participants in their government; and

**WHEREAS**, the North Dakota Close Up program concentrates on the functions and structures of state government and defines constitutional responsibilities assigned to each of the three branches of government; and

**WHEREAS**, the focus of the 2007 North Dakota Close Up program is the legislative branch of government; and

**WHEREAS**, the North Dakota Close Up program has been in existence nearly two decades; and

**WHEREAS**, it is anticipated that nearly 225 North Dakota high school students will participate in the 2007 North Dakota Close Up program;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly declares Monday, February 12, 2007, "North Dakota Close Up Day"; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the North Dakota Council of Educational Leaders.

Filed March 1, 2007

**CHAPTER 595****HOUSE CONCURRENT RESOLUTION NO. 3015**

(Representatives R. Kelsch, Carlisle, Hanson, Karls, Williams)  
(Senator Dever)

**LEGISLATIVE EMPLOYEE COMPENSATION**

A concurrent resolution designating House and Senate employment positions and fixing compensation.

**BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That for the Sixtieth Legislative Assembly, the following positions are designated as employee positions of the House and Senate and are to be paid the daily wages indicated:

	SENATE	
Secretary of the Senate		\$130
Assistant secretary of the Senate		114
Journal reporter		127
Calendar clerk		114
Bill clerk		108
Sergeant-at-arms		100
Administrative assistant to majority leader		118
Staff assistant to majority leader		118
Administrative assistant to minority leader		118
Staff assistant to minority leader		118
Chief committee clerk		118
Appropriations Committee clerk		118
Assistant Appropriations Committee clerk		114
Committee clerk for three-day committee		114
Committee clerk for two-day committee		105
Assistant committee clerk		105
Payroll clerk		95
Deputy sergeant-at-arms		83
Chief page and bill book clerk		92
Legislative assistant		77
	HOUSE	
Chief Clerk		\$130
Assistant chief clerk		114
Journal reporter		127
Calendar clerk		114
Bill clerk		108
Sergeant-at-arms		100
Administrative assistant to majority leader		118
Staff assistant to majority leader		118
Administrative assistant to minority leader		118
Staff assistant to minority leader		118
Administrative assistant to Speaker		118
Chief committee clerk		118

Appropriations Committee clerk	118
Assistant Appropriations Committee clerk	114
Committee clerk for three-day committee	114
Committee clerk for two-day committee	105
Assistant committee clerk	105
Deputy sergeant-at-arms	83
Chief page and bill book clerk	92
Legislative assistant	77

**BE IT FURTHER RESOLVED**, that each employee of the Sixtieth Legislative Assembly is entitled to an additional \$1 per day for each previous regular session of the Legislative Assembly during which that employee was paid for at least 45 days, as either an employee of the Senate or the House, and to receive this additional compensation, which may not exceed \$10 per day, that employee must certify to the Legislative Council the year of each regular session during which that employee was employed as required by this resolution; and

**BE IT FURTHER RESOLVED**, that each majority leader and each minority leader is entitled to one administrative assistant and two staff assistants, but each majority or minority leader may hire fewer or more assistants so long as the total daily compensation for the assistants hired does not exceed the total daily amount authorized for those positions by this resolution; and

**BE IT FURTHER RESOLVED**, that the report of the Employment Committee of the respective house identify the number of employees in each position by listing every employee and the position for which employed; and

**BE IT FURTHER RESOLVED**, that with the approval of the Employment Committee of the respective house, a position may be converted to a part-time position, with the daily compensation converted to a per hour rate of pay, and a part-time employee may hold more than one part-time position so long as the positions held do not exceed a full-time equivalent position; and

**BE IT FURTHER RESOLVED**, that if any employee resigns, is discharged, or for other reasons terminates employment, the compensation provided by this resolution for that employee ceases effective the last day of employment.

Filed January 22, 2007

**CHAPTER 596****HOUSE CONCURRENT RESOLUTION NO. 3020**

(Representatives Mueller, Guleson, Nelson, Vig)

(Senators Taylor, Triplett)

**RENEWABLE ENERGY POLICY DECLARATION**

A concurrent resolution declaring the renewable energy policy of the Legislative Assembly.

**WHEREAS**, the United States is over 60 percent reliant on foreign sources of energy; and

**WHEREAS**, the United States relies on energy from some of the most unstable parts of the world; and

**WHEREAS**, without a change in policy, the United States is projected to remain at 60 percent dependent on foreign sources of energy well into the future; and

**WHEREAS**, our country must move toward an energy-secure economy through long-term investment in alternative sources of energy; and

**WHEREAS**, North Dakota has diverse and robust energy resources that can play an integral part in achieving energy independence; and

**WHEREAS**, North Dakota has lignite coal reserves that represent an 800-year supply of energy; and

**WHEREAS**, the Bakken shale formation in the Williston Basin has greater oil reserves than ever before realized; and

**WHEREAS**, development of America's coal reserves through technologies, such as coal-to-liquid fuels, will lead the way to an energy-secure American economy; and

**WHEREAS**, advanced clean coal technology will effectively reduce power plant emissions; and

**WHEREAS**, advanced technology in the capture, sequestration, and end use for carbon dioxide from power plants will play a significant role in climate mitigation; and

**WHEREAS**, ethanol and biodiesel production have become and will continue to be an important part of the state's energy economy; and

**WHEREAS**, advanced research in biofuels produced from biomass will be critical to the long-term viability of biofuels; and

**WHEREAS**, other states have adopted the renewable energy objectives of the 25x25 initiative--a goal that 25 percent of our nation's energy consumption will come from renewable sources by the year 2025; and

**WHEREAS**, wind power has become an increasing portion of our country's energy portfolio, and North Dakota is on the leading edge of the broad use of this technology; and

**WHEREAS**, our country must move toward a hydrogen economy that can only be realized through aggressive research, development, and commercialization, including that being performed at the Energy and Environmental Research Center in Grand Forks;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly supports a goal of 25 percent of the state and nation's energy supply come from renewable energy resources by the year 2025; and

**BE IT FURTHER RESOLVED**, that the Sixtieth Legislative Assembly supports the North Dakota energy corridor initiative as well as increased federal funding for research, development, and commercialization of hydrogen fuel cells, clean coal, biomass utilization, carbon capture and storage, and coal-to-coal liquid fuel.

Filed March 8, 2007



**CHAPTER 597****HOUSE CONCURRENT RESOLUTION NO. 3021**

(Representatives Grande, Carlson, Hatlestad, Heller, Thoreson, Weiler)

**RONALD REAGAN DAY**

A concurrent resolution proclaiming February 6 to be Ronald Reagan Day.

**WHEREAS**, Ronald Reagan was born in Tampico, Illinois, on February 6, 1911; and

**WHEREAS**, President Ronald Wilson Reagan, a man of humble background, worked throughout his life serving freedom and advancing the public good, having been employed as an entertainer, union leader, corporate spokesman, Governor of California, and President of the United States; and

**WHEREAS**, Ronald Reagan served with honor and distinction for two terms as the 40th President of the United States of America, the second of which he earned the confidence of three-fifths of the electorate and was victorious in 49 of the 50 states in the general election, a record unsurpassed in the history of American presidential elections; and

**WHEREAS**, in 1981, when Ronald Reagan was inaugurated President, he inherited a disillusioned nation shackled by rampant inflation and high unemployment; and

**WHEREAS**, during Mr. Reagan's presidency he worked in a bipartisan manner to enact his bold agenda of restoring accountability and common sense to government which led to an unprecedented economic expansion and opportunity for millions of Americans; and

**WHEREAS**, Mr. Reagan's commitment to an active social policy agenda for the nation's children helped lower crime and drug use in our neighborhoods; and

**WHEREAS**, President Reagan's commitment to our armed forces contributed to the restoration of pride in America, her values, and those cherished by the free world and prepared America's armed forces to meet 21st century challenges; and

**WHEREAS**, President Reagan's vision of "peace through strength" led to the end of the Cold War and the ultimate demise of the Soviet Union, guaranteeing basic human rights for millions of people;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That February 6 is proclaimed to be Ronald Reagan Day; and

**BE IT FURTHER RESOLVED**, that the Sixtieth Legislative Assembly urges the citizens of North Dakota to take cognizance of this event and to participate fittingly in its observance.

Filed April 10, 2007

**CHAPTER 598****HOUSE CONCURRENT RESOLUTION NO. 3022**

(Representatives Delmore, S. Meyer, Weisz)

(Senators Grindberg, Heckaman, Lyson)

**DEMENTIA-RELATED SERVICES STUDY**

A concurrent resolution directing the Legislative Council to study the availability and future need for dementia-related services, as well as funding for programs for individuals with dementias.

**WHEREAS**, persons with dementias need specialized services; and

**WHEREAS**, there are more than 16,000 persons with dementias in North Dakota; and

**WHEREAS**, the number of persons diagnosed with dementia is rapidly increasing, especially among the population age 85 and older; and

**WHEREAS**, the need for specialized services for individuals with dementias is unknown; and

**WHEREAS**, the needs of individuals with dementias may require specialized services for programs to increase those individuals' quality of life;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the availability and future need for dementia-related services, as well as funding for programs for individuals with dementias; 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 Sixty-first Legislative Assembly.

Filed March 29, 2007

**CHAPTER 599****HOUSE CONCURRENT RESOLUTION NO. 3023**

(Representatives Wald, Carlson, Kempenich, Skarphol)  
(Senators Lyson, Wardner)

**ANWR DEVELOPMENT URGED**

A concurrent resolution urging the President of the United States and Congress to open the coastal plain of the Arctic National Wildlife Refuge to oil and gas exploration and development.

**WHEREAS**, the oil and natural gas industry is a vital part of the United States' economy for the foreseeable future with increased oil production needed to fuel the nation's transportation system; and

**WHEREAS**, increasing domestic energy production and reducing dependence on foreign supplies are in the best interests of our nation's strategic and economic well-being as high energy prices impact the nation's farmers, businesses, and the consuming public; and

**WHEREAS**, the United States currently imports 65 percent of the petroleum it needs at a cost of more than \$160 billion a year; and

**WHEREAS**, the coastal plain of the Arctic National Wildlife Refuge is America's best possibility for the discovery of another onshore giant "Prudhoe Bay-sized" oil and gas field in North America, with an estimated 9 billion to 16 billion barrels of recoverable oil; and

**WHEREAS**, advanced technology has greatly reduced the "footprint" needed for Arctic oil development by approximately 64 percent; and

**WHEREAS**, only the 1.5 million acre coastal plain, 8 percent of the Arctic National Wildlife Refuge, is being considered for development and less than 2,000 acres of the 1.5 million acres will be affected by surface development activities while the remaining 17.5 million acres or 92 percent of the Arctic National Wildlife Refuge will remain permanently closed to any kind of development as federally designated wilderness; and

**WHEREAS**, revenues to the federal treasury will be enhanced by billions of dollars from bonus bids, lease rentals, royalties, and taxes attributable to development within the coastal plain of the Arctic National Wildlife Refuge; and

**WHEREAS**, hundreds of thousands of jobs and billions of dollars of economic activity in every state in the Union will be created by development within the coastal plain of the Arctic National Wildlife Refuge; and

**WHEREAS**, the north slope oil fields currently provide the United States with approximately 20 percent of its domestic production, but since 1988 this production has been on the decline, and the Trans-Alaska Oil Pipeline currently operates each day at less than half of its designed capacity; and

**WHEREAS**, government studies suggest that new production from the coastal plain of the Arctic National Wildlife Refuge could produce a 10-year sustained rate of 1 million barrels of oil per day, supplying over 35 percent of the nation's domestic output, with production likely to continue for more than 25 years; and

**WHEREAS**, oil and gas development and wildlife are successfully coexisting in Alaska's Arctic, with the central arctic caribou herd at Prudhoe Bay growing from 3,000 head to as high as 31,857 head during the last 25 years of operations; and

**WHEREAS**, more than 75 percent of Alaskans, including a majority of the residents of Kakovik, the only Inupiat Village on the Arctic National Wildlife Refuge, favor exploration and production in the Arctic National Wildlife Refuge;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly urges the President of the United States and Congress to open the coastal plain of the Arctic National Wildlife Refuge to oil and gas exploration and development; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of the United States and each member of the North Dakota Congressional Delegation.

Filed March 8, 2007

**CHAPTER 600****HOUSE CONCURRENT RESOLUTION NO. 3024**

(Representatives Delmore, Glassheim, Klein)  
(Senators Holmberg, Krebsbach, Triplett)

**MILITARY PRESENCE IN NORTH DAKOTA  
SUPPORTED**

A concurrent resolution in support of the efforts of the Congressional Delegation, the Governor's Task Force on Military in North Dakota, the Grand Forks Council on Military Relations, the Minot Task Force 21, and the Fargo-Moorhead (F-M) Air National Guard Support Group to maintain and enhance military force structure and missions in this state and support of state and local officials in their efforts to keep this state a first-class place for members of the armed forces to live and work.

**WHEREAS**, the military bases and military units located in North Dakota have a major impact on the state's economy; and

**WHEREAS**, the Minuteman III intercontinental ballistic missiles located at Minot Air Force Base have been a critical component of America's strategic deterrent for over 50 years and will remain so far into the future; and

**WHEREAS**, Minot's B-52s, the military's most cost-effective bombers, are being used extensively in the global war on terrorism and cutting the B-52 fleet could leave the United States with a shortfall in bombers until the time when a new long-range bomber enters the inventory; and

**WHEREAS**, Grand Forks Air Force Base is transitioning to become a center in the emerging field of unmanned aerial systems and the Happy Hooligans in Fargo are transitioning to two of the Air Force's most important new missions--Predator unmanned aerial vehicles and future joint cargo aircraft; and

**WHEREAS**, the North Dakota Army National Guard has been heavily engaged in the war on terror since 2001; and

**WHEREAS**, the efforts of the North Dakota Congressional Delegation, the Governor's Task Force on Military in North Dakota, the Grand Forks Council on Military Relations, the Minot Task Force 21, and the F-M Air National Guard Support Group helped maintain military missions at all of North Dakota's military bases during the 2005 base realignment and closure round;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly supports the efforts of the Congressional Delegation, the Governor's Task Force on Military in North Dakota, the Grand Forks Council on Military Relations, the Minot Task Force 21, and the F-M Air National Guard Support Group to maintain and enhance military force to maintain and enhance military force structure and missions in this state and supports state

and local officials in their efforts to keep this state a first-class place for members of the armed forces to live and work; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to each member of the North Dakota Congressional Delegation, the Governor, the Governor's Task Force on Military in North Dakota, the Grand Forks Council on Military Relations, the Minot Task Force 21, the F-M Air National Guard Support Group, the Adjutant General of North Dakota, to the officer in charge of each air force base in this state, and the North Dakota League of Cities.

Filed March 21, 2007

**CHAPTER 601****HOUSE CONCURRENT RESOLUTION NO. 3025**

(Representatives Ekstrom, Klein, Wald)  
(Senators Bakke, Grindberg, Horne)

**POPULATION AND WORKFORCE GROWTH STUDY**

A concurrent resolution directing the Legislative Council to study possible methods of growing North Dakota's population and increasing the available workforce in the state.

**WHEREAS**, during the decade before the last decennial census, the population of the state grew by one-half of one percent, which was the smallest relative growth rate of all 50 states; and

**WHEREAS**, during the early part of this decade, the estimates of the United States Census Bureau indicated that the population of the state declined, and the estimated population of the state remains below the actual population in 2000; and

**WHEREAS**, three population trends affecting the state--rural depopulation, outmigration of young adults and young families, and an increasing proportion of the elderly--contribute toward a difficulty in businesses meeting workforce needs;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study possible methods of growing North Dakota's population and increasing the available workforce in the 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 Sixty-first Legislative Assembly.

Filed March 20, 2007



**CHAPTER 602****HOUSE CONCURRENT RESOLUTION NO. 3026**

(Representatives Mueller, Nelson, Wall)

(Senators Klein, O'Connell, Wanzek)

**ONE-CALL EXCAVATION NOTICE SYSTEM PENALTY  
STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of establishing legislation for the enforcement and assessment of civil penalties for violation of the one-call excavation notice system.

**WHEREAS**, there is currently a one-call excavation notice system that was established in 1995 that is operated through the North Dakota One-Call Board, a nonprofit corporation established within North Dakota Century Code Chapter 49-23; and

**WHEREAS**, the purpose of the one-call excavation notice system is for the protection of the health, safety, and welfare of the public, the owners and operators of underground facilities, and for the preservation of the underground facilities; and

**WHEREAS**, the provisions of the North Dakota one-call excavation notice system do not include a civil process for the enforcement of the one-call excavation notice system or for any civil penalty assessed with the violation of the system; and

**WHEREAS**, according to the Common Ground Alliance, an association dedicated to ensuring public safety, environmental protection, and the integrity of services by promoting effective damage prevention practices in North America, Damage Information Reporting Tool for 2005, "DIRT Report", nationwide 16,089 reports of damage or "near-miss" events were due to "No notification made to the One-Call notification center" and is the leading root cause of cases of underground facility damage, 31.2 percent; and

**WHEREAS**, in 2004, 10,421 events were reported; and

**WHEREAS**, official minutes from the North Dakota One-Call Board meeting of November 17, 2005, state that since year 2000, the director of Education and Public Relations for ND One-Call has sent out 100 certified letters because of damage complaints which the director has received; and

**WHEREAS**, there are federal grant funds available from the United States Department of Transportation's Pipeline and Hazardous Material Safety Administration that may be used to develop or carry out state damage prevention programs in support of public safety, subject to a determination that an effective damage prevention program includes enforcement of state damage prevention laws and regulations for all aspects of the damage prevention process, including public education, and the use of civil penalties for violations assessable by the appropriate state authority;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the feasibility and desirability of establishing legislation for the enforcement of and assessment of civil penalties for violation of the one-call excavation notice 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 Sixty-first Legislative Assembly.

Filed March 20, 2007

**CHAPTER 603****HOUSE CONCURRENT RESOLUTION NO. 3028**

(Representatives Monson, Aarsvold, Nelson)

(Senators Heitkamp, Holmberg, Wanzek)

**CONGRESS URGED TO RECOGNIZE INDUSTRIAL  
HEMP BENEFITS**

A concurrent resolution urging Congress to recognize the multiple benefits of industrial hemp and to facilitate the growing of industrial hemp and the expansion of industries reliant on industrial hemp-based products.

**WHEREAS**, the first record of hemp plant use for stem fiber comes from the Chinese during the 28th century B.C.; and

**WHEREAS**, over the centuries, hemp was valued for maritime uses, clothing, and bagging for cotton; and

**WHEREAS**, today hemp is produced legally in more than 30 nations, including Canada, Great Britain, France, Germany, Australia, and China, and is used in textiles, automotive door panels, luggage racks, insulation, horticultural growth mats, mulch, animal bedding, mortars, paper, biomass fuel, salad dressings, nutrition bars, flour breads, cookies, granola, meatless burgers, protein powders, chips, pasta, coffee blends, frozen desserts, and body care products such as lotions, lip balms, conditioners, shampoos, soaps, shaving products, and massage oils; and

**WHEREAS**, the demand for industrial hemp has resulted in the United States becoming the world's largest importer of foreign-grown hemp; and

**WHEREAS**, American farmers have been prevented from enjoying the economic benefits of lucrative new hemp markets because of existing federal barriers;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly urges the Congress of the United States to recognize the multiple benefits that are obtainable through the production of industrial hemp and to do all things necessary and proper to facilitate the growing of industrial hemp and the expansion of industries reliant on industrial hemp-based products; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Secretary of the United States Department of Agriculture and to each member of the North Dakota Congressional Delegation.

Filed April 5, 2007

**CHAPTER 604****HOUSE CONCURRENT RESOLUTION NO. 3030**

(Representatives Kempenich, Droydal, S. Meyer)  
(Senators Bowman, O'Connell, Stenehjem)

**MISS RODEO AMERICA 2007 CONGRATULATED**

A concurrent resolution congratulating Ms. Ashley Andrews on becoming Miss Rodeo America 2007.

**WHEREAS**, Ashley Andrews is a 21-year-old resident of Bowman, North Dakota, and a senior at the University of Mary in Bismarck, North Dakota; and

**WHEREAS**, Ashley Andrews competed for the coveted title at the 52nd Annual Miss Rodeo America Pageant in Las Vegas, Nevada; and

**WHEREAS**, having won the national title, Ashley Andrews became the first resident of North Dakota to do so in 24 years; and

**WHEREAS**, during this coming year, Ashley Andrews will travel over 100,000 miles, appear at over 100 rodeos, and represent the Professional Rodeo Cowboys Association as Miss Rodeo America 2007; and

**WHEREAS**, Ashley Andrews is a beautiful, talented, and intelligent young woman, a cancer survivor, and a credit to her North Dakota roots;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly extends its heartiest congratulations to Ms. Ashley Andrews and wishes her much joy and happiness as she undertakes her new role as Miss Rodeo America 2007; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward a copy of this resolution to Ms. Andrews and her parents, Bob and Rita Andrews.

Filed March 8, 2007

**CHAPTER 605****HOUSE CONCURRENT RESOLUTION NO. 3031**

(Representatives Wolf, Boehning, Heller, Mueller, Schneider)  
(Senator Lyson)

**RESTITUTION FOR VICTIMS OF CRIME ACT  
PASSAGE URGED**

A concurrent resolution urging Congress to reintroduce the Restitution for Victims of Crime Act to improve the collection of federal court-ordered restitution and other criminal debt and urging the United States Department of Justice to recover court-ordered restitution that is owed innocent victims.

**WHEREAS**, victims of crime and their families often face significant challenges trying to rebuild their lives and recover a sense of emotional and financial security after a crime has been perpetrated against them; and

**WHEREAS**, victims of federal crimes are entitled by law to full and timely restitution for losses from a convicted offender; and

**WHEREAS**, the amount of uncollected federal criminal debt increased from \$6 billion in 1996 to over \$41 billion by the end of fiscal year 2005; and

**WHEREAS**, the Government Accountability Office found that federal criminal justice officials collected an average of just four cents on every dollar of criminal debt that was owed to crime victims in years 2000, 2001, and 2002; and

**WHEREAS**, the Restitution for Victims of Crime Act was introduced in the 109th Congress in the United States Senate by Senators Dorgan and Grassley and others to give Justice Department officials the tools they need to aid in collecting court-ordered federal fines and restitutions; and

**WHEREAS**, this legislation will remove many impediments to increased collections and help federal criminal justice officials prevent criminal defendants from spending or hiding their ill-gotten gains and other financial assets by setting up preconviction procedures for preserving assets for victims' restitution; and

**WHEREAS**, the Restitution for Victims of Crime Act of 2006 has been endorsed by the United States Attorney for North Dakota and a number of organizations concerned about the well-being of crime victims, including the National Center for Victims of Crime, Mothers Against Drunk Driving, the National Organization for Victims Assistance, the National Alliance to End Sexual Violence, Parents of Murdered Children, Inc., Justice Solutions, the National Network to End Domestic Violence, and the National Association of VOCA Assistance Administrators;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly urges the Congress of the United States to reintroduce the Restitution for Victims of Crime Act to improve the collection

of federal court-ordered restitution and other criminal debt and urges the United States Department of Justice to recover court-ordered restitution that is owed innocent victims; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the United States Attorney General and each member of the North Dakota Congressional Delegation.

Filed March 20, 2007

**CHAPTER 606****HOUSE CONCURRENT RESOLUTION NO. 3032**

(Representatives Gulleason, Berg, Boucher, Hawken)

(Senators Nelson, Stenehjem)

**EQUAL RIGHTS AMENDMENT REAFFIRMED**

A concurrent resolution acknowledging the actions of the 44th Legislative Assembly of North Dakota and the sponsors of Senate Concurrent Resolution No. 4007 affirming the equal application of the United States Constitution to all citizens through the passage of the Equal Rights Amendment; declaring Friday, March 9, 2007, North Dakota Equal Rights Amendment Recognition Day; and encouraging a recommitment to the ratification of the Equal Rights Amendment in all states and final passage in Congress.

**WHEREAS**, the proposed Equal Rights Amendment provides "equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex" and Congress sent the Equal Rights Amendment to the states for ratification on March 22, 1972; and

**WHEREAS**, on February 11, 1975, North Dakota became the 34th state to ratify the Equal Rights Amendment, due to the efforts of a broad spectrum of supporters, including the Coordinating Council for the Equal Rights Amendment, the 44th Legislative Assembly, and Senate Concurrent Resolution No. 4007 sponsors Senators Redlin and Lips and Representatives Homuth and Pyle; and

**WHEREAS**, many women worked all of their lives for a constitutional amendment affirming that women had equal rights and protections under the United States Constitution, including Alice Paul, Elizabeth Cady Stanton, and Susan B. Anthony; and

**WHEREAS**, 35 of the needed 38 states ratified the Equal Rights Amendment and without ratification the United States Constitution fails to guarantee female citizens equal rights and equal justice;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly acknowledges the actions of the 44th Legislative Assembly of North Dakota and the sponsors of Senate Concurrent Resolution No. 4007 affirming the equal application of the United States Constitution to all citizens through the passage of the Equal Rights Amendment; and

**BE IT FURTHER RESOLVED**, that the Sixtieth Legislative Assembly declares Friday, March 9, 2007, North Dakota Equal Rights Amendment Recognition Day; and

**BE IT FURTHER RESOLVED**, that the Sixtieth Legislative Assembly encourages a recommitment to the ratification of the Equal Rights Amendment in all states and final passage in Congress; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Governor, the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States, and to each member of the North Dakota Congressional Delegation.

Filed March 20, 2007



**CHAPTER 607****HOUSE CONCURRENT RESOLUTION NO. 3033**

(Representatives Froelich, S. Meyer)

**CANADIAN CATTLE IMPORTATION BAN URGED**

A concurrent resolution urging Congress not to allow the importation of Canadian cattle over 30 months of age.

**WHEREAS**, in 2003 the United States border was closed to Canadian cattle in response to findings of bovine spongiform encephalopathy (BSE) in the cattle; and

**WHEREAS**, after the implementation of corrective measures, the border was reopened in 2005 to Canadian cattle less than 30 months of age; and

**WHEREAS**, many fear that consideration is now being given to removal of the age restriction on Canadian cattle; and

**WHEREAS**, cattle over 30 months of age which originate in a BSE-affected country have an inherently higher risk of having been infected with BSE; and

**WHEREAS**, there has been insufficient time since Canada's last case of BSE to determine whether the corrective measures implemented by Canada have been successful in preventing the spread of BSE; and

**WHEREAS**, the United States cannot afford any further reduction in its share of the global beef market stemming from American products that contain beef from Canadian cattle; and

**WHEREAS**, the United States should not further relax its already lenient import standards until it is scientifically documented that BSE is no longer a risk in Canadian cattle and that there is international acceptance of that conclusion, as demonstrated by a restoration of international markets for American beef and beef products;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly urges the Congress of the United States not to allow the importation of Canadian cattle over 30 months of age until there is scientific evidence, coupled with a sufficient time lapse, to ensure that any corrective measures implemented to counter the incidences of BSE in Canada have been successful; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the United States Secretary of Agriculture and to each member of the North Dakota Congressional Delegation.

Filed March 8, 2007

**CHAPTER 608****HOUSE CONCURRENT RESOLUTION NO. 3034**

(Representatives D. Johnson, DeKrey)  
(Senator Wanzek)

**POTATO COUNCIL FUNDING, GOVERNANCE, AND  
REFUNDS STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of addressing the current imbalance in the funding and governance of the North Dakota State Potato Council and of eliminating refunds from the potato assessment law.

**WHEREAS**, the North Dakota Potato Industry Promotion Act was enacted in 1967 with the specific intent of dividing the state into five districts containing "as nearly equal potato acreage as practicable" with one participating potato grower elected from each district; and

**WHEREAS**, the potato districts have remained geographically unchanged since 1976, with potato districts 1 through 4 consisting of six counties and district 5 consisting of the remaining 47 counties; and

**WHEREAS**, currently the majority of North Dakota potato production occurs within the 47 counties of district 5; and

**WHEREAS**, North Dakota potato growers pay three cents for each 100-pound bag of potatoes they produce; and

**WHEREAS**, the dollars collected through the potato assessment support the research, development, advertising, marketing, education, and promotion of potatoes and the potato industry; and

**WHEREAS**, all potato farmers benefit from efforts that are funded by the potato assessment; and

**WHEREAS**, North Dakota is the only major potato-producing state that has a refund provision in its potato assessment law; and

**WHEREAS**, some growers believe that the refund provision should be retained because it is the only way they can make a meaningful statement about the manner in which and the purpose for which their assessment dollars are expended;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the feasibility and desirability of eliminating refunds from the potato assessment law, including the effect eliminating refunds would have on the potato industry in this state and on efforts to promote potatoes, and the effect eliminating refunds of potato assessments might have with respect to the checkoff provisions of other commodities; and

**BE IT FURTHER RESOLVED**, that the Legislative Council study the feasibility and desirability of addressing the current imbalance of representation in and funding of the North Dakota State Potato Council and the expenditure of checkoff funds by the council and the associations supported by potato checkoff 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 Sixty-first Legislative Assembly.

Filed April 13, 2007

**CHAPTER 609****HOUSE CONCURRENT RESOLUTION NO. 3035**

(Representatives Berg, Boucher)  
(Senators Stenejem, O'Connell)

**LINCOLN'S BIRTHDAY OBSERVANCE**

A concurrent resolution proclaiming February 12, 2008, through February 12, 2010, the official observance of the bicentennial of Abraham Lincoln's birth.

**WHEREAS**, Abraham Lincoln, the 16th President of the United States and one of the nation's greatest leaders, demonstrated courage, compassion, and integrity during one of the most turbulent and violent periods in American history; and

**WHEREAS**, Abraham Lincoln was born of humble beginnings in a log cabin in Kentucky and rose to the presidency through a legacy of honesty, intelligence, and determination, as well as a strong dedication to the nation he served; and

**WHEREAS**, with the belief that all men are created equal, Abraham Lincoln led the national effort to free all slaves in the United State; and

**WHEREAS**, Abraham Lincoln delivered his immortal speech in Gettysburg, Pennsylvania, on November 19, 1863, invoking the basic principles of human equality as outlined in the Declaration of Independence, thereby transforming the objective of the American Civil War from saving the Union to fostering "a new birth of freedom" and reemphasizing the underlying purpose of government to be an institution "of the people, by the people, and for the people"; and

**WHEREAS**, despite the tragedy and turmoil of the Civil War, Abraham Lincoln demonstrated through words and actions a generosity of heart and greatness of character that generated a spirit of reconciliation with malice toward none and charity for all; and

**WHEREAS**, Abraham Lincoln signed into law the Homestead Act on May 20, 1862, which had a major impact in opening up the settlement of the northern plains, including what is now North Dakota; and

**WHEREAS**, Abraham Lincoln signed into law the Morrill Land Grant College Act, on July 2, 1862, which provided grants of land nationwide for the establishment of colleges specializing in agriculture and engineering resulting in the establishment of what is now North Dakota State University; and

**WHEREAS**, Abraham Lincoln appointed the first two governors of the Dakota Territory, part of which later became North Dakota; and

**WHEREAS**, Abraham Lincoln signed the charter for the Northern Pacific Railroad on July 2, 1864, the construction of which through what is now North Dakota led to the settlement of many towns and cities; and

**WHEREAS**, forts in North Dakota were named in the late President's honor, including Fort Abraham Lincoln near Mandan and Fort Lincoln near Bismarck; and

**WHEREAS**, a heroic-sized bust of Abraham Lincoln stands in Frogner Park in Oslo, Norway, sculpted by Valley City artist Paul Fjelde in 1914 and presented as a gift from the people of North Dakota to the people of Norway, in celebration of the 100th anniversary of Syttende Mai, Norwegian Independence Day; and

**WHEREAS**, the Congress of the United States has created the Abraham Lincoln Bicentennial Commission to study and recommend worthy national activities to honor Abraham Lincoln in 2009; and

**WHEREAS**, North Dakotans are beginning preparations for events and programs to commemorate statewide the bicentennial of Lincoln's birth; and

**WHEREAS**, North Dakotans and all Americans may derive inspiration and benefit from the study of the life, words, and deeds of our nation's 16th President;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly of North Dakota proclaims February 12, 2008, through February 12, 2010, to be the official observance of the bicentennial of Abraham Lincoln's birth; and

**BE IT FURTHER RESOLVED**, that the Legislative Assembly invites all North Dakotans to commemorate the 200th anniversary of Abraham Lincoln's birth on Thursday, February 12, 2009.

Filed March 20, 2007

**CHAPTER 610****HOUSE CONCURRENT RESOLUTION NO. 3036**

(Representatives S. Kelsh, Gulleson, Owens)  
(Senators Anderson, Mathern)

**TAX HAVEN DENIAL URGED**

A concurrent resolution urging Congress and the President of the United States to enact federal legislation to deny unintended tax benefits to foreign subsidiaries of United States companies which are set up in tax haven countries.

**WHEREAS**, many profitable multinational businesses are using offshore tax havens to avoid paying their fair share of United States taxes; and

**WHEREAS**, an investigation by a former economist for the Joint Committee on Taxation revealed that United States multinational companies had moved hundreds of billions of dollars of profits to tax havens for years 1999 through 2002, the most recent years for which Internal Revenue Service data was available; and

**WHEREAS**, recent evidence suggests that the tax haven problem is getting worse and may be draining the United States Treasury of tens of billions of dollars every year; and

**WHEREAS**, Senators Byron Dorgan and Carl Levin introduced federal legislation in the 109th Congress to put an end to this tax avoidance scheme adopted by many United States companies that shift their United States earned profits to offshore tax haven subsidiaries; and

**WHEREAS**, enactment of this legislation would save the United States Treasury, and therefore American taxpayers, an estimated \$15 billion over the next 10 years;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly urges Senators Byron Dorgan and Carl Levin to reintroduce and work to enact federal legislation in the 110th Congress which would deny unintended tax benefits to foreign subsidiaries of United States companies that are set up in tax haven countries and urges the President of the United States to support this legislative effort, abandon the current ineffective methods for combatting offshore tax haven abuses, and adopt new enforcement tools and tax policies to ensure multinational companies operating in this country pay the United States taxes they rightfully owe; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to Senators Byron Dorgan and Carl Levin, the President of the United States, and the other members of the North Dakota Congressional Delegation.

Filed March 29, 2007

**CHAPTER 611****HOUSE CONCURRENT RESOLUTION NO. 3037**

(Representatives Kempenich, Drovdal, Heller, Onstad)

(Senators Christmann, Warner)

**FEDERAL MINERAL PAYMENTS FOR PILT  
DECOUPLING URGED**

A concurrent resolution urging Congress to decouple federal mineral royalty revenue payments from states to counties when calculating PILT payments.

**WHEREAS**, the Federal Mineral Leasing Act intended for states to share the mineral royalties with counties, giving priority to those taxing jurisdictions for the impact and infrastructure needs incurred by the industry that pays the royalty; and

**WHEREAS**, federal mineral royalty revenue is considered prior year payments in the current PILT formula; and

**WHEREAS**, prior year payments connected to the PILT formula is a detriment to any economic development in which federal natural resources are extracted in that local government's jurisdiction; and

**WHEREAS**, the decision to extract natural resources owned by the federal government should be based only on the economic and scientific data available and not other programs such as PILT; and

**WHEREAS**, local governments may not have increased nontax revenue due to increased prior year payment because PILT is deducted proportionately; and

**WHEREAS**, federal mineral royalty revenue that is passed on from the states to counties is currently being deducted from their PILT payments as prior year payments; and

**WHEREAS**, PILT payments are payments in lieu of taxes on federal lands; and

**WHEREAS**, federal mineral royalties are not only derived from minerals held under federal land but under private land as well; and

**WHEREAS**, counties should not be penalized when states share royalty revenue with counties for offsetting the impacts of the industry;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly urges the Congress of the United States to decouple federal mineral royalty revenue payments from states to counties when calculating PILT payments; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to each member of the North Dakota Congressional Delegation.

Filed March 27, 2007



**CHAPTER 612****HOUSE CONCURRENT RESOLUTION NO. 3039**

(Representatives Berg, Boucher, Delzer)

(Senators Stenehjem, J. Lee, O'Connell)

**TAIWAN FREE TRADE AGREEMENT URGED**

A concurrent resolution urging the United States Secretary of Commerce to complete a Taiwan-United States free trade agreement.

**WHEREAS**, Taiwan and the United States enjoy one of the most important economic and strategic international relationships that exist today; and

**WHEREAS**, Taiwan and the United States promote shared beliefs in freedom, democracy, and market principles; and

**WHEREAS**, Taiwan is the fourth largest market in the world for United States hard red spring wheat; and

**WHEREAS**, Taiwan imported 585,000 metric tons of hard red spring wheat from the United States in the 2005-06 marketing year as a cash customer; and

**WHEREAS**, a Taiwan-United States free trade agreement would encourage greater innovation and new cooperative ventures for producers and entrepreneurs of both nations; and

**WHEREAS**, a Taiwan-United States free trade agreement would build on the strong relationship between Taiwan and the United States by simultaneously enhancing security and democracy and serving the broader interests of the United States in the Asia-Pacific region;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly urges the United States Secretary of Commerce to complete a Taiwan-United States free trade agreement; and

**BE IT FURTHER RESOLVED**, that the Sixtieth Legislative Assembly is supportive of all efforts to grant Taiwan official observer status at the World Health Assembly because Taiwan has had substantial achievements in the field of health, Taiwan has been a collaborative partner of the United States on a wide range of public health issues, and Taiwan can have a major regional and even global impact on people's health and well-being; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of the United States, the United States Secretary of State, the United States Secretary of Commerce, the United States Secretary of Health and Human Services, the United States Trade Representative, and to each member of the North Dakota Congressional Delegation.

Filed March 21, 2007

**CHAPTER 613****HOUSE CONCURRENT RESOLUTION NO. 3041**

(Representatives Boe, Froelich, Onstad)

**HUMAN SERVICES FUNDING STUDY**

A concurrent resolution directing the Legislative Council to study the trends and correlations of property tax revenue in relation to funding human service delivery in individual counties.

**WHEREAS**, North Dakota operates a state supervised, county administered system of human services delivery; and

**WHEREAS**, county property taxes support a significant share of human service delivery costs in the state; and

**WHEREAS**, the human service needs of a county and their related costs are not well correlated with the individual county's ability to generate property tax; and

**WHEREAS**, six of North Dakota's counties have more than twenty percent of their human service caseload made up by people who reside on a federally recognized Indian reservation or property tax-exempt tribal trust lands; and

**WHEREAS**, these reservation counties have some of the lowest capacity to generate property tax revenue but some of the largest and fastest growing human service costs, creating great difficulty in meeting these critical human service needs;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the trends and correlations of property tax revenue in relation to funding human service delivery in individual counties; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, the Sixty-first Legislative Assembly.

Filed March 29, 2007

**CHAPTER 614****HOUSE CONCURRENT RESOLUTION NO. 3042**

(Representatives Monson, R. Kelsch, Weisz)

(Senators Holmberg, Warner)

**HEMP DIFFERENTIATION URGED**

A concurrent resolution urging Congress to direct the United States Drug Enforcement Administration to differentiate between industrial hemp and marijuana.

**WHEREAS**, "industrial hemp" refers to varieties of cannabis that have less than three-tenths of 1 percent tetrahydrocannabinol and which are genetically distinct from drug varieties of cannabis commonly known as marijuana; and

**WHEREAS**, it was never the intent of Congress to interfere with or otherwise prohibit the production and utilization of industrial hemp; and

**WHEREAS**, the United States Court of Appeals for the Ninth Circuit has ruled that the federal Controlled Substances Act of 1970 explicitly excludes nonpsychoactive industrial hemp from the definition of marijuana; and

**WHEREAS**, industrial hemp is grown commercially in more than 30 nations without undue restriction or complications; and

**WHEREAS**, the reluctance of the United States Drug Enforcement Administration to decriminalize industrial hemp is denying agricultural producers in this country the ability to benefit from a high-value, low-input crop that requires no pesticides and which can provide significant economic benefits not only to American producers but also to American manufacturers;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly urges the Congress of the United States to direct the United States Drug Enforcement Administration to differentiate between industrial hemp and marijuana, thereby legalizing the production of industrial hemp and its use in American manufacturing efforts; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Administrator of the United States Drug Enforcement Administration, the Attorney General of the United States, and to each member of the North Dakota Congressional Delegation.

Filed March 20, 2007

**CHAPTER 615****HOUSE CONCURRENT RESOLUTION NO. 3043**

(Representatives Schneider, N. Johnson)

**AMERICAN CANCER SOCIETY AWARENESS DAY**

A concurrent resolution proclaiming January 29, 2007, as American Cancer Society Awareness Day.

**WHEREAS**, the American Cancer Society is dedicated to eliminating cancer as a major health problem by preventing cancer, saving lives, and diminishing suffering through research, education, advocacy, and service; and

**WHEREAS**, by 2015 the American Cancer Society hopes to reduce the incidence of cancer by 25 percent, reduce cancer mortality by 50 percent, and improve measurably the quality of life for cancer survivors; and

**WHEREAS**, the American Cancer Society seeks to prevent cancer by reducing risks and improving healthy behaviors of North Dakota citizens; and

**WHEREAS**, the American Cancer Society wants North Dakota to lead the nation in appropriate screening and early detection of cancer and increase access to effective cancer treatment and care; and

**WHEREAS**, the American Cancer Society wants to optimize the quality of life for every person affected by cancer and continually and respectfully works to identify and reduce cancer disparities in North Dakota;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly proclaims January 29, 2007, as American Cancer Society Awareness Day.

Filed March 29, 2007

**CHAPTER 616****HOUSE CONCURRENT RESOLUTION NO. 3044**

(Representatives Berg, Boucher)

(Senators Stenejem, O'Connell)

**MISSOURI RIVER WATERS STUDY**

A concurrent resolution directing the Legislative Council to study how the state might pursue additional uses of Lake Sakakawea and Missouri River waters for such beneficial purposes as domestic and industrial uses, recreation, fish and wildlife, and irrigation, and how the state, to enhance its use of the lake and river, might promote congressional review of the 1944 Flood Control Act and a reexamination by the Corps of Engineers of the way in which it manages the Missouri River system.

**WHEREAS**, a significant natural resource issue for our state, as well as the nation, is management of the Missouri River and Lake Sakakawea; and

**WHEREAS**, since enactment of the 1944 Flood Control Act, which governs Missouri River management, numerous economic, environmental, and social changes have occurred in the Missouri River Basin; and

**WHEREAS**, for many years state officials have diligently worked to encourage the Corps of Engineers to manage the Missouri River system equitably and consistently with contemporary circumstances; and

**WHEREAS**, the state recently obtained a court order requiring that the Corps issue a new Master Manual, the document by which it operates the Missouri River system; and

**WHEREAS**, the new Master Manual is an improvement and contains provisions more reflective of contemporary needs and more protective of Upper Basin interest; and

**WHEREAS**, despite these improvements, the Corps' management of the Missouri River system remains outdated and restricts the ability of the state and its citizens to use Lake Sakakawea and Missouri River waters creatively, judiciously, and consistently with contemporary needs and opportunities;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study how the state might pursue additional uses of Lake Sakakawea and Missouri River waters for such beneficial purposes as domestic and industrial uses, recreation, fish and wildlife, and irrigation, and how the state, to enhance its use of the lake and river, might promote congressional review of the 1944 Flood Control Act and a reexamination by the Corps of Engineers of the way in which it manages the Missouri River 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 Sixty-first Legislative Assembly.

Filed March 8, 2007

**CHAPTER 617****HOUSE CONCURRENT RESOLUTION NO. 3046**

(Representatives Mueller, Kingsbury, Price)

(Senators Bakke, Flakoll, Mathern)

**HEALTHY LIFESTYLES PROMOTION STUDY**

A concurrent resolution directing the Legislative Council to study ways in which various public and private entities can cooperate with families to promote healthy lifestyles for children and create awareness about the interplay of healthy lifestyle choices and educational success.

**WHEREAS**, sound physical and mental health impact a child's ability to benefit fully from the array of educational opportunities that are made available; and

**WHEREAS**, choices that a child makes regarding diet, exercise, and substance use impact the child's overall well-being and success in an educational environment; and

**WHEREAS**, smart choices help to alleviate a variety of conditions, including obesity, diabetes, heart disease, high blood pressure, stroke, osteoporosis, and cancer; and

**WHEREAS**, parents, teachers, health care professionals, and representatives of public and private entities can provide useful information and guidance to children as they learn to evaluate their many choices;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study ways in which various public and private entities can cooperate with families to promote healthy lifestyles for children and create awareness about the interplay of healthy lifestyle choices and educational success; 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 Sixty-first Legislative Assembly.

Filed April 10, 2007

**CHAPTER 618****HOUSE CONCURRENT RESOLUTION NO. 3048**

(Representatives Ekstrom, Pollert, Wieland, Wolf)  
(Senators Cook, Krebsbach)

**CRIME VICTIMS COMPENSATION STUDY**

A concurrent resolution directing the Legislative Council to study crime victims compensation funding.

**WHEREAS**, the Department of Corrections and Rehabilitation's crime victims compensation fund has not received the anticipated level of federal funding; and

**WHEREAS**, the crime victims compensation fund has been unable to meet its financial obligations in a timely manner; and

**WHEREAS**, other states have developed different strategies to fund crime victims compensation funds;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council conduct a comprehensive interim study, including a review of other states' efforts, and receive input from victim advocacy groups and medical providers; 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 Sixty-first Legislative Assembly.

Filed March 20, 2007



**CHAPTER 619****HOUSE CONCURRENT RESOLUTION NO. 3049**

(Representatives Ekstrom, Clark, Gullekson, Pollert)

(Senators Klein, Wardner)

**RENAISSANCE ZONE LAW STUDY**

A concurrent resolution directing the Legislative Council to study whether it is feasible and desirable to modify the renaissance zone law to allow for scattered site development.

**WHEREAS**, in 1999 the 56th Legislative Assembly enacted House Bill No. 1492, creating North Dakota renaissance zone law, which is codified as North Dakota Century Code Chapter 40-63; and

**WHEREAS**, since the enactment of the renaissance zone law, there have been amendments to this law during each legislative session, reflecting the evolution of the program and the needs of renaissance zone communities; and

**WHEREAS**, a city renaissance zone can be a very important and beneficial tool for community redevelopment and economic investment, pulling together the entire community to consider the long-term development plans of the city; and

**WHEREAS**, more than 30 North Dakota cities have renaissance zones, covering all regions of the state and with participation by cities of all sizes; and

**WHEREAS**, a city's long-term development plan may include recognition that the site of certain types of existing or new businesses may be more appropriate outside the boundaries of the city's renaissance zone;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study whether it is feasible and desirable to modify the renaissance zone law to allow for scattered site development; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-first Legislative Assembly.

Filed April 5, 2007

**CHAPTER 620****HOUSE CONCURRENT RESOLUTION NO. 3056**

(Representatives N. Johnson, DeKrey, Delmore, S. Meyer)  
(Senator Lyson)

**MISSING PERSONS STUDY**

A concurrent resolution directing the Legislative Council to study the search for and identification of missing persons.

**WHEREAS**, each year families in the United States struggle with the agony of having to report a missing family member; and

**WHEREAS**, in many cases, missing persons investigations grow cold due to an inability of different jurisdictions to share resources and information when conducting investigations and identifying remains; and

**WHEREAS**, not finding or identifying a missing person leaves families of the missing person without closure; and

**WHEREAS**, a cohesive law among the states and cooperation with the federal government which adequately addresses the use of the available resources of the Federal Bureau of Investigation with its national DNA data base are needed to find missing persons and identify remains of unknown individuals;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the search for and identification of missing persons; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-first Legislative Assembly.

Filed March 20, 2007

**CHAPTER 621****HOUSE CONCURRENT RESOLUTION NO. 3057**

(Representatives Wrangham, Ruby)

(Senator Cook)

**INCOME TAX BENEFITS FOR EMPLOYERS STUDY**

A concurrent resolution directing the Legislative Council to study the corporate and individual income tax laws to determine the feasibility and desirability of providing income tax benefits for employers to encourage expansion of employment opportunities in the state.

**WHEREAS**, corporate employers and employers doing business as individuals, partnerships, or other business entities provide employment for thousands of North Dakotans and are the backbone of the state economy's retail, service, construction, manufacturing, transportation, and energy sectors; and

**WHEREAS**, whether income tax benefits for employers could effectively and efficiently encourage expanded employment opportunities and improved wages for employees should be considered; and

**WHEREAS**, appropriately structured tax benefits might be implemented with a positive fiscal impact on state tax revenues because of offsetting benefits of expanded employment and improved wages;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the corporate and individual income tax laws to determine the feasibility and desirability of providing income tax benefits for employers to encourage expansion of employment opportunities 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 Sixty-first Legislative Assembly.

Filed March 27, 2007

**CHAPTER 622****HOUSE CONCURRENT RESOLUTION NO. 3059**

(Representative Wrangham)  
(Senator Triplett)

**CITY EXTRATERRITORIAL ZONING STUDY**

A concurrent resolution directing the Legislative Council to study the exercise of extraterritorial zoning authority by cities.

**WHEREAS**, North Dakota Century Code Section 40-47-01.1 authorizes cities to extend their zoning regulations from one mile to as far as four miles outside the corporate limits of a city; and

**WHEREAS**, the extension of a city's zoning authority to unincorporated territory outside the corporate limits of a city was extended by the Legislative Assembly in 1997 and the zoning authority should be reviewed; and

**WHEREAS**, extraterritorial zoning by cities affects citizens living outside the corporate limits of a city and the involvement of those citizens should be considered in the determination of whether a city may extend the application of the city's zoning regulations outside the corporate limits of a city;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the exercise of extraterritorial zoning authority by cities; 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 Sixty-first Legislative Assembly.

Filed April 5, 2007

**CHAPTER 623****HOUSE CONCURRENT RESOLUTION NO. 3061**

(Representatives Onstad, Boe, D. Johnson, Mueller, Vig)  
(Senator Taylor)

**CONFINED ANIMAL FEEDING OPERATION STUDY**

A concurrent resolution directing the Legislative Council to study the financial and environmental impact of confined animal feeding operations on individual property owners and local communities and develop clear, concise, and consistent laws governing the siting and regulation of confined animal feeding operations.

**WHEREAS**, confined animal feeding operations in this state account for approximately 25 percent of all agricultural income; and

**WHEREAS**, byproducts from the expansion of ethanol and biodiesel industries will provide opportunities for increases in confined animal feeding operations; and

**WHEREAS**, the siting of confined animal feeding operations is currently governed by various state agencies, boards of county commissioners, and boards of township supervisors; and

**WHEREAS**, conflicts and inconsistencies exist between the laws and regulations of the various governmental entities; and

**WHEREAS**, the growth and development of confined animal feeding operations need to be balanced against the financial and environmental impacts that such operations can have on individual landowners and local communities;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the financial and environmental impact of confined animal feeding operations on individual property owners and local communities and develop clear, concise, and consistent laws governing the siting and regulation of confined animal feeding operations; and

**BE IT FURTHER RESOLVED**, that the state health officer and the commissioner of agriculture jointly convene a task force composed of state agency representatives, local government officials, organizations, and groups involved in the development of confined animal feeding operations to assist the Legislative Council in data gathering, analysis, and the formulation of recommendations; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-first Legislative Assembly.

Filed March 27, 2007

**CHAPTER 624****HOUSE CONCURRENT RESOLUTION NO. 3062**

(Representatives Onstad, Bellew, Gruchalla, Ruby)

**UNDERAGE DRINKING STUDY**

A concurrent resolution directing the Legislative Council to study solutions to the problem of underage drinking.

**WHEREAS**, the number of minors who reported using alcohol in the past month in North Dakota was 42.7 percent according to the National Survey on Drug Use and Health Report for 2003-04; and

**WHEREAS**, according to the same report, the number of minors in Tennessee who reported using alcohol in the last month was 22.3 percent; and

**WHEREAS**, Tennessee has the lowest underage use of alcohol and North Dakota has the highest underage use of alcohol; and

**WHEREAS**, Tennessee has serious consequences for minor in possession, including the loss of the minor's license to operate a motor vehicle for at least 90 days, even if the minor was not operating a vehicle at the time of the offense;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study solutions to the problem of underage drinking; 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 Sixty-first Legislative Assembly.

Filed March 29, 2007

**CHAPTER 625****HOUSE CONCURRENT RESOLUTION NO. 3063**

(Representatives Boehning, Amerman, Haas)  
(Senators Dever, Krebsbach, Nelson)

**VETERANS' SERVICES DELIVERY STUDY**

A concurrent resolution directing the Legislative Council to study the delivery and funding of veterans' services by the state and counties.

**WHEREAS**, so long as the people of this state live free there will be veterans of military service who have sacrificed to secure that freedom; and

**WHEREAS**, these veterans are entitled to a host of state and federal benefits and may seek advice and aid from the United States Department of Veterans' Affairs, North Dakota Department of Veterans' Affairs, or a county veterans' service officer in obtaining these benefits; and

**WHEREAS**, the various state and federal veterans' benefits programs are constantly changing; and

**WHEREAS**, the state and the counties may not have adequate human or financial resources to provide the maximum service necessary to ensure that eligible veterans receive the benefits to which they are entitled; and

**WHEREAS**, providing the qualifying benefits to all eligible veterans meets the goal for which these benefits were created - repaying veterans for their dedicated service;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the delivery of veterans' services by the state and counties; 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 Sixty-first Legislative Assembly.

Filed March 20, 2007

**CHAPTER 626****HOUSE CONCURRENT RESOLUTION NO. 3065**

(Representatives Haas, D. Johnson, S. Meyer)  
(Senators Bowman, Krauter, Urlacher)  
(Approved by the Delayed Bills Committee)

**GREAT WESTERN CATTLE TRAIL RECOGNIZED**

A concurrent resolution recognizing the placement of North Dakota's first marker on the Great Western Cattle Trail.

**WHEREAS**, the Great Western Cattle Trail was blazed in 1874 by John T. Lytle; and

**WHEREAS**, by 1879, the Great Western Cattle Trail was the principal thoroughfare for Texas longhorns bound for the northern markets; and

**WHEREAS**, by the time of the last drive, in 1893, the Great Western Cattle Trail had served approximately seven million cattle, hundreds of trail bosses, chuckwagons, and remudas; achieved almost mythical stature on the American frontier; and solidified its place in the history of Texas, Oklahoma, Kansas, Nebraska, South Dakota, North Dakota, and the province of Saskatchewan; and

**WHEREAS**, in 2003, Rotary clubs launched a project to mark the entire Great Western Cattle Trail with concrete posts placed every 6 to 10 miles; and

**WHEREAS**, on May 1, 2008, Rotary District 5580 will proudly place the state's first marker in Medora, North Dakota;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the North Dakota Legislative Assembly is proud to recognize the cooperative efforts of the Rotary clubs and districts and the citizens of the multiple states stretching from southern Texas to the far northern reaches of the Dakotas and Saskatchewan and is equally proud to commemorate the placement of North Dakota's first trail marker and thereby acknowledge for all time the legendary role of the Great Western Cattle Trail in the history of our states and our people; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward a copy of this resolution to the governor of Rotary District 5580.

Filed April 4, 2007



# HOUSE MEMORIAL RESOLUTION

## CHAPTER 660

### HOUSE MEMORIAL RESOLUTION NO. 7001

(Memorial Resolutions Committee)

#### HOUSE MEMBERS MEMORIAL

A memorial resolution for deceased members of the House of Representatives of North Dakota.

**WHEREAS**, God has welcomed to their eternal home our former colleagues:

Pershing Boe, who served in the 37th Legislative Assembly, from District 9, died December 10, 2006;

Curtis E. Brekke, who served in the 56th and 57th Legislative Assemblies, from District 15, died August 31, 2006;

Chris Christopherson, who served in the 53rd through the 55th Legislative Assemblies, from District 11, died October 26, 2006;

John D. Crabtree, who served in the 45th through the 47th Legislative Assemblies, from District 26, died July 9, 2006;

Donald Hawk Crothers, who served in the 33rd Legislative Assembly, from District 9, died December 16, 2005;

Helen Claire Ferguson, who served in the 40th Legislative Assembly, from District 12, died February 2, 2007;

Melfred Hogenson, who served in the 36th Legislative Assembly, from District 22, died November 1, 2006;

James N. Kent, who served in the 40th Legislative Assembly, from District 19, died March 12, 2005;

Harley R. Kingsbury, who served in the 40th through the 43rd and the 46th through the 51st Legislative Assemblies, from District 16, died April 24, 2006;

Richard Kouba, who served in the 51st Legislative Assembly, from District 35, died July 2, 2005;

Tom Kuchera, who served in the 45th through the 47th Legislative Assemblies, from District 18, and in the 48th through the 50th Legislative Assemblies, from District 17-18, died September 2, 2006;

Violetta S. LaGrave, who served in the 43rd Legislative Assembly, from District 34, died November 10, 2005;

Theodore A. Lang, who served in the 39th Legislative Assembly, from District 27; in the 40th through the 42nd Legislative Assemblies, from District 32; and in the 43rd through the 51st Legislative Assemblies, from District 31, died March 5, 2006;

C. Arnold Lillehaugen, who served in the 40th and 41st Legislative Assemblies, from District 17, died April 10, 2006;

Ted G. Maragos, who served in the 37th and 38th Legislative Assemblies, from District 29, died October 25, 2006;

Edward Metzger, who served in the 40th through the 44th Legislative Assemblies, from District 32, died July 2, 2006;

Bert Miller, who served in the 42nd, 44th, and 45th Legislative Assemblies, from District 14, died August 14, 2006;

Clifford Moquist, who served in the 40th and 41st Legislative Assemblies, from District 11, died December 19, 2005;

Olaf Opedahl, who served in the 38th and 39th Legislative Assemblies, from District 45, and in the 40th through the 50th Legislative Assemblies, from District 2, died May 3, 2005;

Everett N. Paulsen, who served in the 38th Legislative Assembly, from District 10, died April 8, 2006;

Denver Rosberg, who served in the 34th Legislative Assembly, from District 46, died February 28, 2005;

Charles A. Russell, who served in the 45th Legislative Assembly, from District 48, died July 26, 2006;

Don Shide, who served in the 48th through the 54th Legislative Assemblies, from District 19, died November 25, 2006;

Bryce Streibel, who served in the 35th, 36th, 38th, and 39th Legislative Assemblies, from District 33, and in the 40th through the 43rd Legislative Assemblies, from District 14, died August 13, 2006;

Marvin Tollefson, who served in the 40th Legislative Assembly, from District 13, died July 29, 2006;

Wilbur Vander Vorst, who served in the 43rd through the 51st Legislative Assemblies, from District 30, died November 8, 2005;

Robert Wells, who served in the 40th and 41st Legislative Assemblies, from District 10, died March 1, 2005; and

**WHEREAS**, we now pause to mourn the passing of our former House colleagues and to honor their memories; and

**WHEREAS**, these legislators rendered outstanding service to the people of the state by their contributions to public service;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA:**

That we express our sorrow on their passing and our appreciation, on behalf of the people of North Dakota, of the loyal and devoted service of our former colleagues; 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 the Secretary of State present enrolled copies of this resolution to the surviving families of these deceased representatives.

Filed March 20, 2007

# SENATE CONCURRENT RESOLUTIONS

## CHAPTER 627

### SENATE CONCURRENT RESOLUTION NO. 4001

(Senators Seymour, Heitkamp, Wardner)  
(Representatives Boucher, Headland, Thorpe)

#### ENERGY DEVELOPMENT URGED

A concurrent resolution urging the President and Congress to make the entire nation available for energy development in an environmentally responsible manner.

**WHEREAS**, the oil and gas industry has demonstrated that onshore and offshore oil and natural gas resources can be developed in an environmentally responsible manner; and

**WHEREAS**, policies of the federal government have placed much of the nation's outer continental shelf off-limits to oil and natural gas production; and

**WHEREAS**, development of oil and natural gas resources, where allowed offshore, has coexisted for decades with recreational and commercial activities while benefiting the entire nation; and

**WHEREAS**, America's increased dependence on foreign energy supplies and global competition for oil and natural gas creates a threat to our national security; and

**WHEREAS**, United States energy use is growing twice as fast as United States energy production, and as a result natural gas prices have increased 140 percent and oil prices have increased 107 percent since 2000; and

**WHEREAS**, the Department of Energy forecasts the annual average price for natural gas will rise 10 percent in 2007; and

**WHEREAS**, rising energy costs are taking a toll on families throughout the nation; according to the National Energy Assistance Directors Association, 32 percent of families had to sacrifice medical care, 24 percent of families failed to make their rent or mortgage payment, 20 percent of families were without food for at least a day, and 44 percent of families skipped paying or only partially paid their home energy bill in the past year; and

**WHEREAS**, applications for the low-income home energy assistance program in 2006 reached almost 5.8 million households last year, the highest level in the last 13 years, with applications up an average of 12 percent, while nine states reported increases of at least 25 percent; and

**WHEREAS**, the nation's farming and ranching sectors depend on a reliable and affordable supply of energy to run equipment, fertilize crops, and transport products to market; and

**WHEREAS**, according to the United States Department of Agriculture, over the past three years increases in the fuel prices paid index have averaged 31 percent, and higher energy prices mean increased costs to farmers and ranchers, who already face tremendous economic challenges; and

**WHEREAS**, farmers' fuel, oil, and electricity expenditures have increased from \$8.6 billion to \$11.5 billion since 1999 according to the United States Department of Agriculture; these increases led to a \$4.5 billion decline in the United States fertilizer industry, which uses natural gas as a raw material to produce nitrogen fertilizer; and 36 percent of the United States fertilizer industry has been shutdown or mothballed since 2002; and

**WHEREAS**, in spite of significant progress in energy efficiency, the United States will still need 32 percent more energy to support economic growth by 2025; and

**WHEREAS**, inland states such as North Dakota are doing more to increase domestic oil and gas production, in 2005 North Dakota was the ninth largest oil-producing state, totaling 35.6 million barrels, while the state's natural gas production was more than 58 billion cubic feet; and

**WHEREAS**, North Dakota is cooperating with federal agencies in coordinating energy production on public lands that lie within state borders in an effort to better meet the energy needs of all Americans; and

**WHEREAS**, North Dakota's public lands have more than 1,500 federal oil and gas leases covering more than 814,000 acres and these public lands produced more than 6 million barrels of oil and more than 7.3 billion cubic feet of natural gas in 2005, generating almost \$35 million in federal oil and gas royalties; and

**WHEREAS**, public lands that lie off the nation's coasts also hold enormous potential for energy production, which could significantly help meet the energy needs of all Americans; and

**WHEREAS**, the United States outer continental shelf is conservatively estimated to hold over 419 trillion cubic feet of technically recoverable natural gas and 86 billion barrels of technically recoverable oil; and

**WHEREAS**, the Arctic National Wildlife Refuge has shown great potential for oil and natural gas production; and

**WHEREAS**, as this nation seizes the challenge of increasing domestic energy production, it is important to remember that those public lands that lie off our nation's coasts and in the Arctic National Wildlife Refuge hold enormous potential for energy production, which could significantly help to meet the energy needs of all Americans;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly urges the President and the Congress of the United States to make the entire nation available for energy development in an environmentally responsible manner; and

**BE IT FURTHER RESOLVED**, that the President revoke administrative withdrawals on offshore energy development on the nation's outer continental shelf to provide needed energy resources to the United States; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of the United States, the President of the Senate, the Speaker of the House of Representatives, the United States Secretary of the Interior, the Secretary of Energy, and to each member of the North Dakota Congressional Delegation.

Filed April 12, 2007

**CHAPTER 628****SENATE CONCURRENT RESOLUTION NO. 4002**

(Senators Stenehjem, J. Lee, O'Connell)  
(Representatives Berg, Boucher, Delzer)

**GERALD R. FORD HONORED**

A concurrent resolution honoring and remembering Gerald R. Ford, Thirty-eighth President of the United States.

**WHEREAS**, all North Dakotans were saddened to learn of the death of former President Gerald R. Ford on December 26, 2006; and

**WHEREAS**, President Gerald R. Ford served in the Pacific Theatre in the United States Navy during World War II, in the United States House of Representatives, including eight years as minority leader, as vice president, and as President of the United States; and

**WHEREAS**, President Gerald R. Ford had strong Midwestern roots, having been born in Nebraska, attended college at the University of Michigan where he helped his football team win two national titles, and having represented the state of Michigan in Congress; and

**WHEREAS**, President Gerald R. Ford will be remembered for having restored honesty, candor, and integrity to government as he ushered in a new era of national healing at a time of crisis in our nation; and

**WHEREAS**, President Gerald R. Ford's steadfast support of his wife Betty during her struggles with breast cancer and substance abuse addiction helped remove the stigmas associated with these medical and social ills; and

**WHEREAS**, North Dakotans were particularly honored when as President, Gerald R. Ford named a North Dakotan, Thomas Kleppe, to the cabinet position of Secretary of the Interior; and

**WHEREAS**, all North Dakotans join our nation in mourning the passing of this great American;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That we join all North Dakotans in expressing our sorrow on the passing of former President Gerald R. Ford as we honor and remember him for his loyal and dedicated service to our country; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward a copy of this resolution to the family of former President Gerald R. Ford and a copy to the Gerald R. Ford Presidential Library and Museum in Grand Rapids, Michigan.

Filed January 18, 2007

**CHAPTER 629****SENATE CONCURRENT RESOLUTION NO. 4004**

(Senators Triplett, Fiebiger, Lyson)  
(Representatives DeKrey, Delmore, Klemin)

**JUVENILE COURT ACT PERSONNEL STUDY**

A concurrent resolution directing the Legislative Council to study the respective responsibilities of county and state judicial system personnel under the Uniform Juvenile Court Act in light of statutory ambiguities in defining those responsibilities.

**WHEREAS**, the Uniform Juvenile Court Act, Chapter 27-20, was enacted in 1969 and has been amended numerous times in following years; and

**WHEREAS**, during the years after the Act's enactment the structure of this state's judicial system and the relationships between county personnel and state judicial system personnel have changed substantially as a result of legislative enactments; and

**WHEREAS**, the current Act provides for numerous actions in the adjudication of juvenile court cases, including preparation of petitions, service of notice, and presentation of evidence, but is ambiguous in defining institutional responsibilities for ensuring these actions are effectively and appropriately carried out; and

**WHEREAS**, these ambiguities pose difficulties concerning intrusions into respective executive and judicial branch spheres of authority and the blurring of institutional lines of responsibilities; and

**WHEREAS**, in light of the involvement and respective roles, and institutional interests, of county and state personnel and officials in the adjudication of juvenile court cases, a thorough review of those roles and interests and applicable statutes would aid in ensuring proper execution of the Act's objectives;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the respective responsibilities of county and state judicial system personnel under the Uniform Juvenile Court Act in light of statutory ambiguities in defining those responsibilities; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-first Legislative Assembly.

Filed March 26, 2007



**CHAPTER 630****SENATE CONCURRENT RESOLUTION NO. 4005**

(Senators Mathern, Fischer, J. Lee)  
(Representatives Ekstrom, Hawken, Schneider)

**MENTALLY ILL TRANSITION TO INDEPENDENCE  
STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of establishing a transition to independence program for young adults with mental illness.

**WHEREAS**, all youth are challenged by the transition to young adult roles in employment, education, independent living, and community life; and

**WHEREAS**, during this transition period, young adults face decisions about future career and educational goals, social responsibilities, self-management of one's behavior, alcohol and drug use, social problem-solving competencies, and maintenance of friendships and intimate relationships; and

**WHEREAS**, young adults with, or at-risk of, mental illness are particularly challenged by this transitional period; and

**WHEREAS**, current foster care, mental health, education, and other programs have not provided the community-relevant skills and experiences needed to facilitate successful transitions from home and school to young adult roles for those young adults with mental illness; and

**WHEREAS**, the transition period for young adults is complicated further by the lack of coordinated services among children's mental health, child welfare, educational, adult mental health, substance abuse treatment, and rehabilitation sectors; and

**WHEREAS**, in order to improve the likelihood of these individuals becoming contributing members of society, systems and methods that will effectively prepare them for transition to the community need to be explored and researched; and

**WHEREAS**, a transition to independence program helps to prepare and support young adults with mental illness in their movement into adult roles and personal functioning and success through an individualized developmentally appropriate process; and

**WHEREAS**, a transition to independence program helps emphasize strength-based services that can help young adults acquire skills in the key life domains of education, employment, community living, and managing relationships;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the feasibility and desirability of establishing a transition to independence program for young adults with mental illness; 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 Sixty-first Legislative Assembly.

Filed March 28, 2007

**CHAPTER 631****SENATE CONCURRENT RESOLUTION NO. 4006**

(Senators Robinson, Anderson, Heitkamp)  
(Representatives Gulleon, Metcalf, Wall)

**VETERANS HEALTH CARE URGED**

A concurrent resolution urging Congress to require the United States Department of Veterans' Affairs assume all health care and pharmaceutical needs of veterans in state veterans homes.

**WHEREAS**, the veterans residing in state veterans homes were in federal service; and

**WHEREAS**, the United States Department of Veterans' Affairs previously provided the veterans residing in state veterans homes with primary care and pharmaceuticals; and

**WHEREAS**, the cost of care for the veterans has increased dramatically;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly urges the Congress of the United States to provide funding and require the United States Department of Veterans' Affairs to assume all health care and pharmaceutical needs of veterans in state veterans homes; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the United States Department of Veterans' Affairs and to each member of the North Dakota Congressional Delegation.

Filed March 28, 2007

**CHAPTER 632****SENATE CONCURRENT RESOLUTION NO. 4007**

(Senators Taylor, Erbele, Flakoll)  
(Representatives DeKrey, Gulleson, Onstad)

**MEAT AND POULTRY INSPECTION PROGRAM  
FUNDING URGED**

A concurrent resolution urging Congress to provide adequate funding for state meat and poultry inspection programs and to enact legislation that allows federally approved state programs to ship state-inspected products interstate.

**WHEREAS**, state meat and poultry inspection programs are being funded at a level less than adequate for established and growing programs; and

**WHEREAS**, if the United States Department of Agriculture does not provide adequate funding, states may be unable to maintain their "equal to" status with federal requirements and the United States Department of Agriculture would then have to assume all responsibilities for meat inspection, which would be at nearly twice the cost and cause many plants to drop inspection; and

**WHEREAS**, the United States Department of Agriculture has verified through annual reviews and oversight of state inspection programs over the past 35 years that state meat and poultry inspection programs are equal to or exceed the level of food safety of the federal inspection program; and

**WHEREAS**, federal plants have an unfair advantage over state-inspected plants because they can ship products interstate; and

**WHEREAS**, current law penalizes small businesses by limiting marketing options; and

**WHEREAS**, current law discriminates against United States' products by allowing foreign-inspected products, which have received less inspection oversight from the United States Department of Agriculture than state programs, to be freely shipped and sold nationwide; and

**WHEREAS**, the current law banning interstate shipment is a marketing issue, not a food safety issue; and

**WHEREAS**, legislation is pending before Congress to lift the ban on interstate shipment of state-inspected meat and poultry products; and

**WHEREAS**, legislation would improve food safety by creating a more uniform system and increase consumer confidence;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly urges the Congress of the United States to provide adequate funding for state meat and poultry inspection programs

and to enact legislation that allows federally approved state-inspected products to be shipped interstate; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of the United States, the Secretary of the United States Department of Agriculture, the Chairmen of the United States Senate and United States House of Representatives Agriculture Committees, and to each member of the North Dakota Congressional Delegation.

Filed March 2, 2007

**CHAPTER 633****SENATE CONCURRENT RESOLUTION NO. 4008**

(Senators J. Lee, Robinson)  
(Representative Price)

**CHILD WELFARE SERVICES STUDY**

A concurrent resolution directing the Legislative Council to study issues affecting the delivery of child welfare services in the state, including out-of-home placement determinations; emphasis on family counseling, including in-home counseling; staffing patterns in county social services offices; supervision standards for child welfare staff; funding from private, state, and federal sources; and the viability of joint powers agreements among counties and the nature of public and private partnerships in support of effective child welfare services.

**WHEREAS**, the Children's Justice Initiative Task Force was established to review issues regarding children in the state's child welfare system, particularly children who are abused or neglected, and to consider methods of ensuring better collaboration among and support for entities associated with child welfare services, including the courts; and

**WHEREAS**, information assembled and reviewed by the task force indicated that a disparity in standards used to determine the extent of child welfare services to be provided and to identify adequate methods to ensure child safety in the home exists; and

**WHEREAS**, joint efforts between the Department of Human Services and Village Family Services demonstrate contributions made by public and private partnerships in support of families; and

**WHEREAS**, there appears to be a need to establish uniform supervision standards for local level child welfare staff and to consider mechanisms to ensure an adequate level of training and compensation for child welfare staff; and

**WHEREAS**, lack or uncertainty of funding may adversely affect the delivery of basic services in rural areas and may limit the availability of effective preventative program services to limit children being removed from the home and to assist in effective transition upon return if a child is removed; and

**WHEREAS**, funding issues demonstrate the need to review the mix of private, state, and federal funding in support of child welfare services and to consider the viability of joint powers agreements among counties and the nature of public and private relationships to ensure that effective child welfare services are provided;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study issues affecting the delivery of child welfare services in the state, including out-of-home placement determinations; emphasis on family counseling, including in-home counseling; staffing patterns in county social services offices; supervision standards for child welfare staff; funding

from private, state, and federal sources; and the viability of joint powers agreements among counties and the nature of public and private partnerships in support of effective child welfare services; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-first Legislative Assembly.

Filed March 28, 2007

**CHAPTER 634****SENATE CONCURRENT RESOLUTION NO. 4010**

(Senators Nelson, Horne, Robinson)

(Representatives Hawken, Mueller)

**JAMES D. PLOYHAR MEMORIALIZED**

A concurrent resolution in memory of James D. Ployhar.

**WHEREAS**, on January 2, 2007, James D. Ployhar was summoned to eternal rest; and

**WHEREAS**, James D. Ployhar taught music education in schools in Lakota and Fargo and at the International Music Camp for many years, established and directed the Fargo Theatre Big Band All Stars, and served as a clinician and guest conductor at the undergraduate and university level throughout the world; and

**WHEREAS**, James D. Ployhar, pursuant to a commission by the North Dakota Legislative Assembly, composed the Flickertail March and the Centennial Overture; and

**WHEREAS**, James D. Ployhar wrote and composed music that has been performed worldwide and coproduced a Disney adventure film; and

**WHEREAS**, James D. Ployhar graduated from Valley City State University and was awarded the university's Distinguished Alumnus Award; and

**WHEREAS**, James D. Ployhar was husband to Ruth, a father to Steve, Carol, Debbie, Jane, and Doug, and a friend to many citizens of this state; and

**WHEREAS**, we now pause to mourn the passing of James D. Ployhar and honor his memory for his outstanding service to the people of this state and those around the world who have had the pleasure of hearing his music performed;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That we express our sorrow on the passing of James D. Ployhar and show our appreciation, on behalf of the people of North Dakota, for his service and his gift of music; and

**BE IT FURTHER RESOLVED**, that the Secretary of State present enrolled copies of this resolution to the widow and children of James D. Ployhar, the Valley City State University Music Alumni Hall of Fame, and the International Music Camp.

Filed February 27, 2007



**CHAPTER 635****SENATE CONCURRENT RESOLUTION NO. 4011**

(Senators J. Lee, Nelson, Nething)  
(Representatives Boucher, DeKrey, S. Meyer)

**GAMING COMMISSION STUDY**

A concurrent resolution directing the Legislative Council to study the formation of a North Dakota gaming commission to regulate and control all forms of gaming in North Dakota.

**WHEREAS**, it is the responsibility of the Legislative Assembly to review existing boards and commissions to ensure that they fairly, efficiently, and competently regulate the industries over which they govern; and

**WHEREAS**, the gaming industry is made up of various forms of gaming, with numerous bodies governing the activities thereof; and

**WHEREAS**, the gaming industry is vital to North Dakota's economy and is a multimillion dollar industry contributing millions of dollars in tax revenues to the state each biennium;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the formation of a North Dakota gaming commission to regulate and control all forms of gaming 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 Sixty-first Legislative Assembly.

Filed March 26, 2007

**CHAPTER 636****SENATE CONCURRENT RESOLUTION NO. 4012**

(Senators J. Lee, Krebsbach, Nelson)  
(Representatives Delmore, Gulleason, L. Meier)

**GO RED DAY**

A concurrent resolution declaring Friday, February 2, 2007, "Go Red Day" in North Dakota and encouraging all citizens to wear red to raise awareness of cardiovascular disease.

**WHEREAS**, heart disease and stroke are the number one and number four killers of women over the age of 25; and

**WHEREAS**, 53 percent of all cardiovascular disease deaths occur in females, and each year approximately 32,800 more females than males die from stroke; and

**WHEREAS**, in 2004 heart disease and stroke accounted for 39.1 percent of all deaths in females in North Dakota; and

**WHEREAS**, in 2004 heart disease and stroke killed more females in North Dakota than the next five causes of death combined; and

**WHEREAS**, in 2007 the anticipated direct and indirect cost of cardiovascular diseases and stroke in the United States is estimated to be \$431.8 billion; and

**WHEREAS**, heart disease and stroke are largely preventable with early detection and prevention; and

**WHEREAS**, Go Red For Women is the American Heart Association's national call to increase awareness of heart disease and to inspire women to take charge of their heart health; and

**WHEREAS**, all women should learn their own personal risk for heart disease, using tools such as the American Heart Association's Go Red For Women Heart CheckUp and by talking to their health care providers; and

**WHEREAS**, the American Heart Association and the Dakota Medical Association are committed to public education and professional education about the risk factors for heart disease and stroke and to take action to reduce, control, or prevent as many risk factors as possible; and

**WHEREAS**, Go Red North Dakota, a three-year, \$1.2 million initiative of the American Heart Association and Dakota Medical Foundation, launches in 2007 to improve the cardiovascular health of women and their families;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly expresses support for the Go Red North Dakota Initiative and commends the broad range of private and public sector

partners from the state and local levels for their hard work to improve the heart health of women and their families; and

**BE IT FURTHER RESOLVED**, that the Sixtieth Legislative Assembly declares Friday, February 2, 2007, "Go Red Day" and encourages all citizens to wear red to raise awareness of cardiovascular disease; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Governor, statewide Go Red spokesperson First Lady Mikey Hoeven, the Dakota Medical Foundation, the American Heart Association, and each member of the North Dakota Congressional Delegation.

Filed February 1, 2007

**CHAPTER 637****SENATE CONCURRENT RESOLUTION NO. 4013**

(Senator Lyson)  
(Representatives Hatlestad, Sukut)

**PUBLIC HOUSING AUTHORITY TAX EXEMPTION  
STUDY**

A concurrent resolution directing the Legislative Council to study the property tax exemption for public housing authorities.

**WHEREAS**, the property of public housing authorities is exempt from taxation; and

**WHEREAS**, the tax exemption for property of public housing authorities is based on federal law as well as state statutory and constitutional authority; and

**WHEREAS**, public housing authorities acquire properties that previously have been on the tax rolls, which erodes the tax base for political subdivisions, which has particularly harsh impacts on school districts; and

**WHEREAS**, the removal of property from property tax rolls shifts the tax burden to other taxpayers and the loss of tax revenues reduces the quality of services provided to all property, including property of public housing authorities; and

**WHEREAS**, the growing level of property acquisition by public housing authorities in some communities is threatening the ability of political subdivisions to function;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the property tax exemption for public housing authorities; 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 Sixty-first Legislative Assembly.

Filed March 26, 2007

**CHAPTER 638****SENATE CONCURRENT RESOLUTION NO. 4015**

(Senators Klein, Erbele, Urlacher)  
(Representatives Brandenburg, Weisz)

**CONSERVATION SECURITY PROGRAM FUNDING  
URGED**

A concurrent resolution urging the Secretary of the United States Department of Agriculture to restore full funding to the Conservation Security Program, address and resolve problems in the administration of the program, and to compensate individual farmers for damages incurred which were caused by a lack of clarity in the general provisions of the program and how these provisions were communicated to participants.

**WHEREAS**, the Farm Security and Rural Investment Act of 2002 amended the Food Security Act of 1985 to authorize the Conservation Security Program; and

**WHEREAS**, the Conservation Security Program is administered by the United States Department of Agriculture's Natural Resources Conservation Service; and

**WHEREAS**, the Conservation Security Program is a voluntary program designed to provide financial and technical assistance to promote the conservation and improvement of soil, water, air, energy, plant and animal life, and other conservation purposes on tribal and private working lands; and

**WHEREAS**, the program is designed to provide equitable access to benefits to all producers, regardless of size of operation, crops produced, or geographic location; and

**WHEREAS**, the program is being poorly administered with Conservation Security Program participants receiving inaccurate and conflicting information concerning the program; and

**WHEREAS**, participants have been harmed by decisions made in reliance on commitments made by administrators of the program;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly urge the Secretary of the United States Department of Agriculture to restore full funding to the Conservation Security Program, to address and resolve problems in the administration of the program, and to compensate individual farmers for damages incurred which were caused by a lack of clarity in the general provisions of the program and how these provisions were communicated to participants; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Secretary of the United States Department of Agriculture, the chairman of the Senate Committee on Agriculture, Nutrition and Forestry, and to each member of the North Dakota Congressional Delegation.

Filed March 26, 2007

**CHAPTER 639****SENATE CONCURRENT RESOLUTION NO. 4016**

(Senators Lyson, Fischer, Krebsbach)  
(Representatives Charging, Drovdal, Sukut)

**SOLUTION TO MISSOURI RIVER SEDIMENTATION  
URGED**

A concurrent resolution urging Congress to direct the United States Army Corps of Engineers to address and rectify the problems caused by the accumulation of sediment in the Missouri River main stem reservoirs.

**WHEREAS**, the Fort Peck Dam, Garrison Dam, Oahe Dam, Big Bend Dam, Fort Randall Dam, and Gavins Point Dam and their associated reservoirs were improved or constructed under the Flood Control Act of 1944; and

**WHEREAS**, the Missouri River dams were constructed to provide numerous benefits, including flood control, hydropower generation, irrigation and domestic water supply, recreation, and fish and wildlife, with those benefits averaging over \$1 billion per year; and

**WHEREAS**, the United States Army Corps of Engineers' 2007 annual operating plan summary of engineering data shows a total annual sediment inflow into the reservoirs of 92,500 acre-feet per year; and

**WHEREAS**, the accumulation of sediment in the reservoirs since the reservoirs became operational has resulted in the loss of over 4,500,000 acre-feet of storage, which is the equivalent of 1,000 square miles of storage 7.5 feet deep; and

**WHEREAS**, the accumulation of sediment in the reservoirs has contributed to the occurrence and spread of noxious weeds; and

**WHEREAS**, the benefits created by the Missouri River dams accrue to all of the United States of America; and

**WHEREAS**, the Missouri River and its dams are a national resource; and

**WHEREAS**, the United States Army Corps of Engineers, the federal agency assigned the task of operating and maintaining the dams, does not specifically address sediment management in its annual operation and maintenance plan; and

**WHEREAS**, the ability of these dams to accumulate and store water for release during times of drought is essential to preservation of water-based benefits over the entire system, from the Fort Peck Dam to the mouth of the Missouri River near St. Louis, Missouri; and

**WHEREAS**, the extension of the life of and benefits provided by the Missouri River dams and reservoirs is of major importance to the United States;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly urges the Congress of the United States to direct the United States Army Corps of Engineers to address and rectify problems caused by the accumulation of sediment in the Missouri River main stem reservoirs; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of the United States; the Speaker and Minority Leader of the United States House of Representatives; the Majority Leader and the Minority Leader of the United States Senate; the Secretary of the Interior; the District Engineer, Omaha District; United States Army Corps of Engineers; the Division Commander of the Northwestern Division of the United States Army Corps of Engineers; the Secretary of the Army; the Governors of the states of Montana, South Dakota, and Nebraska; and to each member of the North Dakota Congressional Delegation.

Filed April 9, 2007



**CHAPTER 640****SENATE CONCURRENT RESOLUTION NO. 4017**

(Senator Nething)

**SMOKING CESSATION AND AVOIDANCE SUPPORTED**

A concurrent resolution expressing support for the continued statewide efforts to prevent the initiation of smoking among minors and to promote quitting among minors and adults and expressing concern about employers that allow their teenage employees to take smoking breaks, a practice that encourages the initiation of tobacco use, does not encourage or create incentives for minors to quit smoking, reduces productivity and the amount of time spent on assigned work-related duties, and creates hostility between smoking and nonsmoking employees.

**WHEREAS**, the Legislative Assembly is concerned about minors' access to tobacco, the marketing of tobacco products to minors, and the health effects of tobacco products on minors and adults; and

**WHEREAS**, 90 percent of all initiation of tobacco use occurs among individuals under the age of 21; and

**WHEREAS**, each day, nearly 6,000 minors start smoking; of these, nearly 2,000 will become regular smokers resulting in almost 800,000 new underage smokers annually; and

**WHEREAS**, tobacco use in adolescence is associated with a range of health-compromising behaviors; and

**WHEREAS**, studies show that employees who smoke take a higher proportion of sick days and have longer absences than nonsmoking employees and have about two times more lost production time per week than employees who never smoked;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly expresses support for the continued statewide efforts to prevent the initiation of smoking among minors and to promote the quitting of smoking among minors and adults and expresses concern about employers that allow their teenage employees to take smoking breaks, a practice that encourages the initiation of tobacco use, does not encourage or create incentives for minors to quit smoking, reduces productivity and the amount of time spent on assigned work-related duties, and creates hostility between smoking and nonsmoking employees.

Filed March 28, 2007

**CHAPTER 641****SENATE CONCURRENT RESOLUTION NO. 4018**

(Senator J. Lee)  
(Representative Boucher)

**LONG-TERM CARE CHOICE SUPPORTED**

A concurrent resolution expressing support for long-term care choices, including home and community-based services, for North Dakotans with disabilities and older adults.

**WHEREAS**, the public interest would best be served by a broad array of long-term care services that promote individual autonomy, dignity, and choice for older adults and those with disabilities, including more home and community-based services to give all North Dakotans who are older adults or who have a disability, free choice in planning and managing their lives; and

**WHEREAS**, the Legislative Assembly recognizes that nursing home care is also a critical part of the state's long-term care continuum and that such services should continue to promote individual dignity, autonomy, and a homelike environment to the greatest extent possible;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly supports long-term care choices, including home and community-based services, for North Dakotans with disabilities and older adults to:

1. Plan and manage their own lives to the greatest extent possible;
2. Participate in the planning and operation of community-based services;
3. Receive information that will allow them to make informed care decisions;
4. Choose to remain in their communities and in their homes when appropriate to their needs and when it can be reasonably accommodated taking into account the resources available to the state and the needs of others with disabilities;
5. Meet their needs through a care system in a culturally sensitive way;
6. Support family members and other persons providing voluntary care; and
7. Make care choices from a long-term care continuum that is visible, trusted, and easily accessed.

Filed March 28, 2007

**CHAPTER 642****SENATE CONCURRENT RESOLUTION NO. 4019**

(Senators Dever, Fischer, J. Lee)  
(Representatives Kreidt, Porter, Weisz)

**CHIP REAUTHORIZATION URGED**

A concurrent resolution urging Congress to reauthorize the state children's health insurance program.

**WHEREAS**, the Legislative Assembly regards the health of the children in this state to be of paramount importance to families in this state; and

**WHEREAS**, poor health of children is a threat to the educational achievement and the social and psychological well-being of the children of this state; and

**WHEREAS**, protecting the health of the children in this state is essential to the well-being of our youngest citizens and the quality of life in this state; and

**WHEREAS**, the Legislative Assembly considers Healthy Steps, the North Dakota children's health insurance program under North Dakota Century Code Chapter 50-29, which has enrolled uninsured children since the program's inception, to be an integral part of the arrangements for health benefits for the children of this state; and

**WHEREAS**, the Legislative Assembly recognizes the value of the state children's health insurance program in preserving child wellness, preventing and treating childhood diseases, improving health outcomes, and reducing overall health costs; and

**WHEREAS**, the Legislative Assembly considers the federal funding available for the state children's health insurance program to be indispensable to providing health benefits for children of modest means;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly urges the Congress of the United States to reauthorize the state children's health insurance program under Title XXI of the federal Social Security Act [42 U.S.C. 1397aa et seq.], to assure continued federal funding for Healthy Steps--North Dakota's state children's health insurance program; and

**BE IT FURTHER RESOLVED**, that the Legislative Assembly urges the Governor of North Dakota to work with the members of the North Dakota Congressional Delegation to ensure state children's health insurance program is reauthorized in a timely manner; and

**BE IT FURTHER RESOLVED**, that the Legislative Assembly urges all applicable components of North Dakota state government to work together with educators, health care providers, social workers, and parents to ensure that all

available public and private assistance for providing health benefits to uninsured children in this state be used to the maximum extent possible; and

**BE IT FURTHER RESOLVED**, that the Legislative Assembly urges the Governor to use his best efforts to continue to provide meaningful assistance to help identify and enroll children who qualify for the state children's health insurance program; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Governor, the director of the Department of Human Services, the Superintendent of Public Instruction, the executive director of the Board of Nursing, the executive director of the State Board of Medical Examiners, the board administrator of the Board of Social Work Examiners, and each member of the North Dakota Congressional Delegation.

Filed March 28, 2007

**CHAPTER 643****SENATE CONCURRENT RESOLUTION NO. 4020**

(Senators Krauter, Urlacher, Wardner)  
(Representatives Kerzman, S. Meyer, Wald)

**TIMESHARE AGREEMENT STUDY**

A concurrent resolution directing the Legislative Council to study the regulation of and consumer protection for timeshare agreements.

**WHEREAS**, the rural areas of this state provide for a unique timeshare destination; and

**WHEREAS**, timeshare agreements for vacations in this state or sold to people in this state for vacations in other states are not currently regulated so as to provide consumers protection from unscrupulous sellers of timeshares; and

**WHEREAS**, many other states protect their citizens by filing requirements and by requiring timeshare agreements to certain consumer protection provisions; and

**WHEREAS**, the regulation of timeshares may involve the expertise of more than one state agency, including the Real Estate Commission, Securities Commissioner, and the Attorney General;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the regulation of and consumer protection for timeshare agreements; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-first Legislative Assembly.

Filed March 26, 2007

**CHAPTER 644****SENATE CONCURRENT RESOLUTION NO. 4021**

(Senators Cook, Oehlke, Tollefson, Urlacher, Wardner)

**INCOME TAX LAWS STUDY**

A concurrent resolution directing the Legislative Council to study the income tax laws, with emphasis on adjustments necessary to minimize or negate the impact to any taxpayer of establishing a single, uniform income tax return for all individuals.

**WHEREAS**, since 1981 North Dakota income tax laws have provided for two independent and inconsistent methods to determine state individual income tax liability; and

**WHEREAS**, existence of two inconsistent sets of laws relating to income taxes greatly increases administrative difficulties for the tax department, makes understanding and preparing income tax returns much more complex for taxpayers and tax preparers, and makes analysis of some pending legislation more difficult and unpredictable for the Legislative Assembly; and

**WHEREAS**, it appears that more than 97 percent of income tax filers file returns using form ND-1 so it should be possible to eliminate the need for the other income tax filing method by providing small adjustments that would minimize or negate any negative tax impact for the small percentage of taxpayers using the other income tax filing method;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the income tax laws, with emphasis on adjustments necessary to minimize or negate the impact to any taxpayer of establishing a single, uniform income tax return for all individuals; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-first Legislative Assembly.

Filed March 26, 2007

**CHAPTER 645****SENATE CONCURRENT RESOLUTION NO. 4022**

(Senator Mathern)  
(Representative Kretschmar)

**PURSUIT OF PEACE IN IRAQ URGED**

A concurrent resolution urging Congress and the President to continue to pursue peace in Iraq and Afghanistan.

**WHEREAS**, American forces on duty in Iraq and Afghanistan serve bravely and merit the respect and support of all people; and

**WHEREAS**, at the conclusion of their efforts, it is desired to bring our troops back with honor and the appreciation of our citizens;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly supports our brave men and women of the armed forces and their sacrifice and commitment to duty; and

**BE IT FURTHER RESOLVED**, that the Sixtieth Legislative Assembly urges Congress and the President to continue to pursue peace in Iraq and Afghanistan; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to each member of the North Dakota Congressional Delegation and to the President of the United States.

Filed April 9, 2007

**CHAPTER 646****SENATE CONCURRENT RESOLUTION NO. 4025**

(Senators Warner, J. Lee)

(Representative Price)

**FOSTER CARE STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of developing and funding a program to provide services to youth in foster care who are preparing to transition to adulthood and for youth between 18 and 21 years of age who have left foster care and need assistance.

**WHEREAS**, foster care services provide a substitute temporary living environment for children who cannot safely remain with their families; and

**WHEREAS**, an estimated 20,000 youth transition out of foster care annually in the United States; and

**WHEREAS**, youth who transition out of foster care are often at extreme risk of poverty and homelessness, victimization and criminal involvement, illness, early childbearing, and low educational attainment; and

**WHEREAS**, a child in foster care who reaches 18 years of age is likely to need assistance in making the transition from foster care to self-sufficiency in the form of assistance in obtaining a high school diploma, career exploration, vocational training, job placement and retention, training in daily living skills, training in budgeting and financial management skills, substance abuse prevention, and preventive health activities; and

**WHEREAS**, a program to provide services to youth transitioning out of foster care would provide personal and emotional support through mentors and the promotion of interactions with dedicated adults; and

**WHEREAS**, a program that provides financial, housing, counseling, employment, education, medical, and other appropriate support and services to former foster care recipients between 18 and 21 years of age would complement these young adults' efforts to achieve self-sufficiency and assure that program participants recognize and accept their personal responsibility for preparing for and making the transition from adolescence to adulthood;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the feasibility and desirability of developing and funding a program to provide services to youth in foster care who are preparing to transition to adulthood and for youth between 18 and 21 years of age who have left foster care and need assistance; 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 Sixty-first Legislative Assembly.

Filed March 28, 2007

**CHAPTER 647****SENATE CONCURRENT RESOLUTION NO. 4026**

(Senators Warner, Cook, Krebsbach, O'Connell)

(Representatives Froseth, Price)

(Approved by the Delayed Bills Committee)

**PEACE GARDEN TRAVEL PASSPORT EXEMPTION  
URGED**

A concurrent resolution urging Congress to exempt travel to the International Peace Garden from passport requirements.

**WHEREAS**, the International Peace Garden commemorates the peace between the United States and Canada through a 2,339-acre botanical garden located on the border between Manitoba and North Dakota; and

**WHEREAS**, the International Peace Garden hosts an International Music Camp, Summer School of Fine Arts, which is heavily attended by youth from the United States and Canada; and

**WHEREAS**, the camp provides immersion in the fine arts within the borders of the International Peace Garden; and

**WHEREAS**, the International Peace Garden hosts a variety of athletic and other educational events; and

**WHEREAS**, passport requirements for those attending International Peace Garden events would create an undue cost and administrative hardship that would greatly affect attendance; and

**WHEREAS**, passport requirements would generally affect attendance at the International Peace Garden for visitors whose only entrance into another country is within the boundaries of the International Peace Garden;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly urges Congress to exempt travel to the International Peace Garden from passport requirements; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President and to each member of the North Dakota Congressional Delegation.

Filed April 3, 2007

**CHAPTER 648****SENATE CONCURRENT RESOLUTION NO. 4028**

(Senators Hacker, Holmberg, Robinson)  
(Representatives DeKrey, R. Kelsch, Owens)

**PATERNITY REGISTRY STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of establishing a paternity registry.

**WHEREAS**, adoption is the process by which a legal parent-child relationship is created between individuals who are not biologically parent and child; and

**WHEREAS**, to ensure placement of children in need of homes with families, it is important that the adoption process supports the needs of all individuals involved and that the process is as fair, efficient, and cost-effective as possible; and

**WHEREAS**, a paternity registry gives unwed putative fathers a way to protect their interests in preserving a parent-child relationship when that child is or may be placed for adoption; and

**WHEREAS**, a paternity registry provides a way to promote stability in adoptive placements by ensuring that a child's adoptive placement is not disrupted by a putative father initiating late or untimely legal proceedings;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council be directed to study the feasibility and desirability of establishing a paternity registry; 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 Sixty-first Legislative Assembly.

Filed March 28, 2007

**CHAPTER 649****SENATE CONCURRENT RESOLUTION NO. 4029**

(Senators Mathern, Nething)

**STATE HOSPITAL FACILITY TRANSFER STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of transferring some of the facilities and property of the State Hospital from the Department of Human Services to the Department of Corrections and Rehabilitation.

**WHEREAS**, the State Hospital in Jamestown is provided for under Sections 12 and 13 of Article IX of the Constitution of North Dakota; and

**WHEREAS**, North Dakota Century Code Section 25-02-03 identifies the State Hospital as an institution serving specialized populations of the mentally ill, including persons suffering from drug addiction or alcoholism, and is one component of the North Dakota mental health delivery system; and

**WHEREAS**, the issues of the most appropriate use of the State Hospital in Jamestown, services for individuals with mental illness, services for individuals addicted to alcohol or other drugs, and the needs of the Department of Corrections and Rehabilitation have been issues of ongoing concern for the Legislative Assembly; and

**WHEREAS**, historically the average daily population of the State Hospital has been decreasing but the State Hospital has been experiencing an increase in the sex offender population and the state's inmate population has been increasing; and

**WHEREAS**, North Dakota Century Code Section 50-06-06.5 directs the Department of Human Services to develop a plan for an integrated, multidisciplinary continuum of services for individuals with chronic mental illness which must provide that an individual requiring treatment be submitted to the least restrictive available conditions necessary to achieve the purposes of treatment; and

**WHEREAS**, the Department of Human Services' plan for services for individuals with mental illness and individuals addicted to alcohol or other drugs should reflect the preference for treating individuals in or near the individuals' home community;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study the feasibility and desirability of transferring some of the facilities and property of the State Hospital from the Department of Human Services to the Department of Corrections and Rehabilitation, including consideration of any constitutional, legal, and financial issues related to a transfer and creation of a comprehensive plan for the care of individuals with mental illness and care for individuals addicted to alcohol or other drugs and for the best use of the State Hospital facilities and property, including the continuation of a state

hospital in Jamestown to provide necessary services to individuals with mental illness and drug addiction and alcoholism; 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 Sixty-first Legislative Assembly.

Filed March 28, 2007

**CHAPTER 650****SENATE CONCURRENT RESOLUTION NO. 4030**

(Senator Heckaman)

**SCHOOL DISTRICT JOINT POWERS AND  
REORGANIZATION STUDY**

A concurrent resolution directing the Legislative Council to study joint powers associations and school district reorganizations, annexations, and dissolutions.

**WHEREAS**, there are 95,600 students enrolled in public elementary and high schools in North Dakota; and

**WHEREAS**, this state has 156 high school districts, 34 elementary school districts, 5 one-room rural school districts, and 3 nonoperating school districts; and

**WHEREAS**, the continuing decline in the number of students will likely be paralleled by a continuing decline in the number of school districts; and

**WHEREAS**, under current law, a school district that is no longer self-sustaining has available the statutory options of reorganization with one or more contiguous districts or dissolution; and

**WHEREAS**, the statutory requirements for school district reorganizations and dissolutions need to be periodically examined to determine their appropriateness and continued relevancy given the numerous changes in the educational sector;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study joint powers associations and school district reorganizations, annexations, and dissolutions; the statutory requirements for effectuating each outcome, including the role of county superintendents and county committees; the impact of each on students, parents, teachers, taxpayers, and communities; and the continued relevancy of the processes in light of numerous changes in the educational sector; 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 Sixty-first Legislative Assembly.

Filed April 9, 2007

**CHAPTER 651****SENATE CONCURRENT RESOLUTION NO. 4031**

(Senators Cook, J. Lee, Stenehjem)  
(Representatives Belter, Kasper, Weiler)

**PROPERTY TAX EFFICIENCY STUDY**

A concurrent resolution directing the Legislative Council to study political subdivisions that receive property tax revenue and any changes that may increase efficiencies and reduce property taxes.

**WHEREAS**, this state relies heavily upon government employment with 21 percent of all workers being government employees as compared to 15 percent nationwide; and

**WHEREAS**, North Dakota ranks first in the number of statewide elected officials and units of government as compared to the other states and the District of Columbia; and

**WHEREAS**, on the basis of governmental units per 10,000 population, this state has over six times the governmental units of Minnesota, over three times the governmental units of Montana, and almost two times the governmental units of South Dakota; and

**WHEREAS**, many of the governmental units are funded primarily or entirely by property taxes; and

**WHEREAS**, property taxes on the same parcel of property have increased faster than increases in other taxes and inflation and efficiency in local government would benefit taxpayers;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study political subdivisions that receive property tax revenue and any changes that may increase efficiencies and reduce property 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 Sixty-first Legislative Assembly.

Filed March 26, 2007

**CHAPTER 652****SENATE CONCURRENT RESOLUTION NO. 4032**

(Senator Dever)

**STUDENT HIGH-RISK BEHAVIOR REDUCTION STUDY**

A concurrent resolution directing the Legislative Council to study ways in which schools and school districts can better identify high-risk students and provide programs designed to reduce the incidences of high-risk behaviors that can lead to suicide attempts.

**WHEREAS**, in 2005, 15 males between the ages of 10 and 19 committed suicide in North Dakota; and

**WHEREAS**, in a 2005 survey, 15 percent of North Dakota high school students and 14 percent of North Dakota seventh and eighth grade students reported that they had considered suicide; and

**WHEREAS**, in the 2005 survey, 12 percent of North Dakota high school students and 8 percent of North Dakota seventh and eighth grade students reported that they had planned a suicide; and

**WHEREAS**, in the 2005 survey, 6 percent of North Dakota high school students and 5 percent of North Dakota seventh and eighth grade students reported that they had attempted suicide;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study ways in which schools and school districts can train teachers, counselors, and all other school staff to better identify high-risk students and ways in which schools and school districts can plan and provide programs designed to reduce the incidences of high-risk behaviors that can lead to suicide attempts; 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 Sixty-first Legislative Assembly.

Filed April 9, 2007



**CHAPTER 653****SENATE CONCURRENT RESOLUTION NO. 4034**

(Senators Nelson, Fiebiger, Flakoll, Mathern, Pomeroy)  
(Approved by the Delayed Bills Committee)

**SMITH-LEMLI-OPITZ SYNDROME AWARENESS DAY**

A concurrent resolution proclaiming Monday, November 12, 2007, Smith-Lemli-Opitz Syndrome Awareness Day.

**WHEREAS**, Smith-Lemli-Opitz Syndrome is an inherited autosomal recessive disorder, which means individuals with the disorder have inherited the defective gene from both parents, preventing individuals from making cholesterol in amounts sufficient for normal growth and development; and

**WHEREAS**, the disorder is a metabolic syndrome, which means a cluster of conditions that often occur together, characterized by developmental disabilities, which may include mental retardation, psychomotor and growth retardation, and communication issues; behavioral issues, which may include outbursts and self-abuse; and multiple congenital malformations, which may include organ problems, gastrointestinal problems, low muscle tone, cataracts, photosensitivity, weakened immune system, brittle bones, cleft palate, oral aversions, and hearing problems; and

**WHEREAS**, the clinical spectrum for individuals with Smith-Lemli-Opitz Syndrome is wide, ranging from some individuals having remarkably good intellectual functioning and the possibility of a normal lifespan and other individuals having severe developmental problems and a shortened lifespan; and

**WHEREAS**, although there are only two known cases in North Dakota, Smith-Lemli-Opitz Syndrome occurs in relatively high frequency in populations of northern and central European background, with as many as 1 in 30 individuals being carriers of the defective gene affecting approximately 1 in 10,000 to 30,000 live births; and

**WHEREAS**, although there is no known cure for Smith-Lemli-Opitz Syndrome, treatments such as dietary therapy, feeding tubes, and surgery have been found to relieve some of the symptoms; and

**WHEREAS**, early recognition and treatment of individuals with Smith-Lemli-Opitz Syndrome may improve substantially the medical and developmental outcome of these individuals;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly proclaims Monday, November 12, 2007, Smith-Lemli-Opitz Syndrome Awareness Day.

Filed April 3, 2007

**CHAPTER 654****SENATE CONCURRENT RESOLUTION NO. 4035**

(Senators Dever, Freborg, Klein)  
(Representatives Carlisle, R. Kelsch, L. Meier)  
(Approved by the Delayed Bills Committee)

**SNOW ANGEL CAPITAL**

A concurrent resolution declaring North Dakota the snow angel capital of the world.

**WHEREAS**, on Saturday, February 17, 2007, 8,962 North Dakotans, representing communities from across the state, gathered on the North Dakota State Capitol grounds to set a new world record for the most snow angels made simultaneously; and

**WHEREAS**, upon final confirmation from the Guinness Book of World Records, North Dakota would surpass the previous record of 3,794 set in 2006 by students from Michigan Technical University; and

**WHEREAS**, North Dakota set the original record of 1,791 simultaneous snow angels in 2002; and

**WHEREAS**, a diverse group of North Dakota individuals ranging in age from 1 month to 99 years, families, schools, and organizations participated in the event; and

**WHEREAS**, individuals from 141 North Dakota towns, 17 states, 3 Canadian provinces, 6 countries, and 5 continents participated in the event; and

**WHEREAS**, the photograph of the snow angel event has been published in at least 137 out-of-state newspapers; and

**WHEREAS**, snow angels have become one of the hottest new fashion statements since the event; and

**WHEREAS**, the event received national media attention on ABC, CBS, NBC, MSNBC, CNN, NPR, and the Weather Channel; and

**WHEREAS**, the North Dakota spirit of perseverance, determination, and delight in the four seasons was made evident to the world in this world-class, recordbreaking event; and

**WHEREAS**, in their attempt to set a new world record, North Dakotans not only showed their competitive spirit, but demonstrated to the world their incomparable pride, character, and resolve;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly declares North Dakota the snow angel capital of the world and congratulates all those involved in making this event and the world record possible for the state.

Filed April 3, 2007

**CHAPTER 655****SENATE CONCURRENT RESOLUTION NO. 4036**

(Senators Stenehjem, O'Connell)  
(Representatives Berg, Boucher)

**MILITARY PERSONNEL TRIBUTE**

A concurrent resolution paying tribute to North Dakota military personnel who have died in Iraq or Afghanistan.

**WHEREAS**, in addition to those memorialized by the Fifty-ninth Legislative Assembly, Spc. James Holmes, East Grand Forks; Spc. Dennis Ferderer, Jr., New Salem; Spc. Michael Hermanson, Fargo; Sgt. Travis Van Zoest, Bismarck; Cpl. Curtis Mehrer, Bismarck; Cpl. Jeremiah S. Santos, Devils Lake and Minot; Cpl. Paul A. Beyer, Jamestown; Cpl. Nathan J. Good Iron, Mandaree; Cpl. Christopher Kleinwachter, Wahpeton; and Maj. Alan R. Johnson, Montpelier, were called upon by the United States of America to fight for their country; and

**WHEREAS**, these brave, courageous, and valorous soldiers in performing their duty made that supreme sacrifice that great men and women have been called upon down through our country's history to make for the right to be free; and

**WHEREAS**, it is the intention of the Sixtieth Legislative Assembly, acting as the representatives of all the people of the state of North Dakota, to recognize these individuals;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly of the state of North Dakota hereby pays solemn tribute to:

Spc. James Holmes, East Grand Forks;  
Spc. Dennis Ferderer, Jr., New Salem;  
Spc. Michael Hermanson, Fargo;  
Sgt. Travis Van Zoest, Bismarck;  
Cpl. Curtis Mehrer, Bismarck;  
Cpl. Jeremiah S. Santos, Devils Lake and Minot;  
Cpl. Paul A. Beyer, Jamestown;  
Cpl. Nathan J. Good Iron, Mandaree;  
Cpl. Christopher Kleinwachter, Wahpeton; and  
Maj. Alan R. Johnson, Montpelier

for the ultimate sacrifice they paid when called by the United States of America to serve their country with honor and dignity; and

**BE IT FURTHER RESOLVED**, that the people of the state of North Dakota hereby join together to express deepest sympathies to the parents and relatives of these brave soldiers and to express to them the fervent belief that these men did not die in vain.

Filed April 16, 2007

**CHAPTER 656****SENATE CONCURRENT RESOLUTION NO. 4037**

(Senators Stenehjem, O'Connell)

(Representatives Berg, Boucher)

(Approved by the Delayed Bills Committee)

**SHORELINE FISHING OPPORTUNITIES URGED**

A concurrent resolution urging the United States Army Corps of Engineers to coordinate annually with the North Dakota Game and Fish Department to ensure that adequate shoreline fishing areas are available to satisfy the recreational needs of the citizens of North Dakota.

**WHEREAS**, the number of anglers utilizing the shorelines of Lake Sakakawea and Lake Oahe has declined substantially in the last ten years; and

**WHEREAS**, the average age of North Dakota anglers has increased to 51 years of age; and

**WHEREAS**, with low water conditions there is increased habitat for endangered species and allowing increased but limited access would not have any adverse impact on these endangered species or archaeological resources; and

**WHEREAS**, the North Dakota Sportfishing Congress and its constituent fishing, sportsmen's, and wildlife clubs have unanimously approved a resolution requesting the United States Army Corps of Engineers to modify its master plan to set aside specifically designated shore-fishing access areas along the shores of Lake Sakakawea and Lake Oahe; and

**WHEREAS**, at a minimum, these shore-fishing access sites should consist of an area extending one-half mile on either side of each boating access site and recreationally zoned area; and

**WHEREAS**, vehicles should only be allowed to travel to and from the fishing location and be restricted to the exposed shoreline;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the 60th Legislative Assembly urges the United States Army Corps of Engineers to coordinate annually with the North Dakota Game and Fish Department to ensure that adequate shoreline fishing areas are available to satisfy the recreational needs of the citizens of North Dakota; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Secretary of the Interior; the District Engineer, Omaha District, United States Army Corps of Engineers; the Division Commander of the Northwestern Division of the United State Army Corps of Engineers; the Secretary of the Army; and each member of the North Dakota Congressional Delegation.

Filed April 26, 2007

**CHAPTER 657****SENATE CONCURRENT RESOLUTION NO. 4038**

(Senators Stenehjem, O'Connell)

(Representatives Berg, Boucher)

(Approved by the Delayed Bills Committee)

**DOCTOR OF THE DAY PROGRAM APPRECIATION**

A concurrent resolution recognizing and expressing appreciation to participants in the 2007 Doctor of the Day program.

**WHEREAS**, many legislators during the legislative session have utilized the medical services of physicians who have volunteered to provide basic health care through the North Dakota Medical Association Doctor of the Day program; and

**WHEREAS**, physicians participating in the Doctor of the Day program have been called upon to provide their medical skills, sample medications, timely interventions, and referrals for further treatment, thereby contributing to an enhanced sense of general well-being by the legislative body and welcome relief for ailing individuals; and

**WHEREAS**, during the current Legislative Assembly, 22 physicians came to the Capitol to participate as doctors of the day, including Rob Beattie and James Brosseau from Grand Forks, Kim Krohn from Minot, Ted Kleiman from Fargo, Dale Klein from Mandan, and Gary Betting, Aaron Fortney, Ernest Godfread, Ray Gruby, Keith Happel, Jeff Hostetter, Shiraz Hyder, Gordon Leingang, Kelly Longie, Kevin Longie, Tom Magill, Sara McCullough, Ben Muscha, Jackie Quisno, Guy Tangedahl, Charles Volk, and Herb Wilson from Bismarck; and

**WHEREAS**, the University of North Dakota School of Medicine and Health Sciences Family Medicine Residency training program in Bismarck provided equipment and supplies used in the medical exam room, many pharmaceutical companies provided sample nonprescription medications and vitamins, and the North Dakota Department of Health and North Dakota Medical Association coordinated logistics and activities of the program; and

**WHEREAS**, the PrimeCare Health System and the Medcenter One Health System of Bismarck offered legislators and staff opportunities in January and March to participate in health screenings to monitor their blood pressure and blood sugar and cholesterol levels and to receive information to guide them in improving their health and lifestyle;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That members of the Sixtieth Legislative Assembly by adoption of this concurrent resolution express their gratitude and appreciation to those who provided their services and supplies through the 2007 Doctor of the Day program.

Filed April 26, 2007

**CHAPTER 658****SENATE CONCURRENT RESOLUTION NO. 4039**

(Senators Stenehjem, O'Connell)

(Representatives Berg, Boucher)

(Approved by the Delayed Bills Committee)

**USS NORTH DAKOTA NAMING URGED**

A concurrent resolution urging the Secretary of the Navy to name a ship the USS North Dakota.

**WHEREAS**, the state of North Dakota has had only one ship named after this state, the USS North Dakota, which was decommissioned in November 1923; and

**WHEREAS**, 24 states have ships currently named after the state and 21 states have had two or more ships named after the state, leaving only five states that have had only one ship named after the state, including North Dakota; and

**WHEREAS**, the state of North Dakota has shown unwavering support for members of the armed forces and strongly supports memorializing their service with the naming of a Navy ship the USS North Dakota;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly urges the Secretary of the Navy to name a ship the USS North Dakota; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Secretary of the Navy and each member of the North Dakota Congressional Delegation.

Filed April 26, 2007

**CHAPTER 659****SENATE CONCURRENT RESOLUTION NO. 4040**

(Senators Stenehjem, O'Connell)  
(Representatives Berg, Boucher)  
(Approved by the Delayed Bills Committee)

**REAL ID ACT REPEAL URGED**

A concurrent resolution urging Congress to repeal the REAL ID Act of 2005.

**WHEREAS**, the federal REAL ID Act of 2005 mandates an unfunded national driver's license in the state of North Dakota; and

**WHEREAS**, implementation of the REAL ID Act may cost this state an estimated \$14,000,000; and

**WHEREAS**, the REAL ID national data base will invite identity theft and invasion of privacy; and

**WHEREAS**, the REAL ID Act will cost and inconvenience the people of North Dakota without the proffered attendant benefit of protection from terrorism;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixtieth Legislative Assembly urges the Congress of the United States to repeal the REAL ID Act of 2005; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of the United States, the Secretary of Homeland Security, the Secretary of the Department of Transportation, and to each member of the North Dakota Congressional Delegation.

Filed April 20, 2007



# SENATE MEMORIAL RESOLUTION

## CHAPTER 661

### SENATE MEMORIAL RESOLUTION NO. 8001

(Memorial Resolutions Committee)

#### SENATE MEMBERS MEMORIAL

A memorial resolution for deceased members of the Senate of North Dakota.

**WHEREAS**, God has summoned to eternal rest our former colleagues:

A. F. Gronvold, who served in the 33rd, 36th, and 37th Legislative Assemblies, from District 42, died February 1, 2007;

Adam Krauter, who served in the 45th and 46th Legislative Assemblies, from District 38, and in the 48th through the 51st Legislative Assemblies, from District 35, died August 15, 2005;

C. Warner Litten, who served in the 40th through the 43rd Legislative Assemblies, from District 21, died July 26, 2006;

R. E. Meidinger, who served in the 33rd through the 38th Legislative Assemblies, from District 23, died June 4, 2006;

Bryce Streibel, who served in the 47th through the 54th Legislative Assemblies, from District 14, died August 13, 2006;

Steve Thomas, who served in the 32nd through the 35th Legislative Assemblies, from District 26, died October 1, 2005;

Clarence Welander, who served in the 33rd and 34th Legislative Assemblies, from District 25, died August 2, 2006; and

**WHEREAS**, we now pause to mourn the passing of our former Senate colleagues and to honor their memories; and

**WHEREAS**, these legislators rendered outstanding service to the people of the state by their contributions to public service;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA:**

That we express our sorrow on their passing and our appreciation, on behalf of the people of North Dakota, of the loyal and devoted service of our former colleagues; and

**BE IT FURTHER RESOLVED**, that for the perpetuation of their memory this token of respect and sympathy by their successors in trust be printed in the Journal of the Senate and that the Secretary of State present enrolled copies of this resolution to the surviving families of these deceased senators.

Filed March 26, 2007